



PAVILION REPLACEMENTS – LIBRARY PARK

BIDDING AND CONTRACT DOCUMENTS

BID NO. 2024-01

VOLUME I

Document 00002

PROJECT DATA

Project Title: Pavilion Replacements – Library Park

Project/Bid Number: 2024–01

Project Address: 4255 Bonaventure Blvd.
Weston, FL 33332

Project Owner: City of Weston

City Commission: Margaret Brown, Mayor
Byron L. Jaffe, Commissioner
Mary Molina-Macfie, Commissioner
Chris Eddy, Commissioner
Henry Mead, Commissioner

Owner's Representative: Donald P. Decker
City Manager/CEO
17200 Royal Palm Boulevard
Weston, Florida 33326
Phone: 954-385-2000
Fax: 954-385-2010

Project Manager: Luke Hamilton
Public Works Department
2599 South Post Road
Weston, Florida 33327
Phone: 954-385-2600
Fax: 954-385-2610

Project Consultant: Reddy Chitepu
Public Works Department
2599 South Post Road
Weston, Florida 33327
Phone: 954-385-2600
Fax: 954-385-2610

END OF PROJECT DATA

Section 00003

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**BIDDING AND CONTRACT DOCUMENTS
VOLUME I**

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- indicates the section documents that shall be submitted with Bid proposal. (For 00510, 00520 and 00530 submit one of the applicable documents). Bidder shall indicate with , the documents submitted and sign below.

Name of Bidder (Please Print)

Signature

Title

Date

LIST OF DRAWINGS

Library Park

<u>Sheet #</u>	<u>Title</u>
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2.	PROJECT KEY PLAN
3.	PROJECT NOTES
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5.	SITE PLAN PAVILION 1
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DOCUMENT 00010

**CITY OF WESTON
NOTICE TO BIDDERS**

NOTICE IS HEREBY GIVEN that the City of Weston, Florida, (the "CITY") will be accepting sealed bids for:

**PAVILION REPLACEMENTS – LIBRARY PARK
BID NO. 2024-01**

Bids shall be accepted from qualified, experience and licensed general contractors to furnish all labor, supervision, equipment, supplies, tools, permitting, safety measures and all other necessary incidentals for pavilion replacements at the City of Weston Library Park located at 4255 Bonaventure Blvd., Weston, FL 33332. The scope of work includes complete removal of existing pavilions and replacement with new pavilion structures including concrete slab, foundations, accessories, etc., in accordance with the plans and specifications provided with this bid.

Simultaneous with the delivery of the executed contract to the CITY upon award, the CONTRACTOR shall furnish an executed Performance and Payment bond in an amount equal to one hundred percent (100%) of the contract value, as security for the faithful performance of contract and for the payment of all persons performing labor and/or furnishing materials in connection with the Project.

BIDDERS are advised that the CITY has **NOT** authorized the use of CITY's seal by individuals or entities responding to the CITY's Bid, and that any such use by unauthorized persons or entities constitutes a second-degree misdemeanor pursuant to Section 165.043, Florida Statutes.

MANDATORY PRE-BID CONFERENCE

A mandatory pre-bid conference shall be held virtually on **January 26, 2024 at 11:00 a.m.** local time. All Bidders planning to submit a bid are required to attend this virtual conference. Failure of a bidder to be present shall render a bidder to be deemed non-responsive and the bid shall not be considered for award. Decisions of the City shall be final. Connect to the Live Event link via Cisco Webex:

Event:	Pre-Bid for Bid No. 2024-01 Pavilion Replacements - Library Park
Event address for attendees:	https://westonfl.webex.com/westonfl/j.php?MTID=md56ae00c7ab94014f02acc599d8f498f You may also connect to: www.webex.com <ul style="list-style-type: none">• Click "Join a Meeting"• Enter Event/Meeting Number
Date and Time:	Friday, January 26, 2024 11:00 AM Eastern Standard Time (New York, GMT-05:00)
Event Number:	2307 941 5329
Event Password:	weston (937866 from phones and video systems)

Audio Conference:	To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code. US Toll + 1-415-655-0001 Show all global call-in numbers. Access code: 230 794 15329
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BID SUBMITTAL DEADLINE

Sealed bids shall be received by the Director of Procurement until **2:00 p.m. local time, on February 8, 2024 the “Submittal Deadline”** at the City of Weston, City Hall, located at 17200 Royal Palm Boulevard, Weston, Florida. The official clock at the City Hall reception desk shall govern. Bids received after this time shall be returned unopened. The sealed bids will be publicly opened at the CITY of Weston, CITY Hall after the Bid Submittal Deadline. Award of a Bid will be made at a CITY Commission meeting. The public opening of submittals may be viewed by the public via Cisco Webex as follows:

Event:	Opening for Bid No. 2024-01 Pavilion Replacements - Library Park
Event address for attendees:	https://westonfl.webex.com/westonfl/j.php?MTID=m485e121c4be57d656002d86eb98f2dd2 You may also connect to: www.webex.com <ul style="list-style-type: none"> • Click “Join a Meeting” • Enter Event/Meeting Number
Date and Time:	Thursday, February 8, 2024 2:00 PM Eastern Standard Time (New York, GMT-05:00)
Event Number:	2305 170 8292
Event Password:	weston (937866 from phones and video systems)
Audio Conference:	To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code. US Toll + 1-415-655-0001 Show all global call-in numbers. Access code: 230 517 08292

AVAILABILITY OF BID DOCUMENTS

Interested parties may download a copy of Bid No. 2024-01, Pavilion Replacements – Library Park, by visiting the CITY’s Procurement website at: <https://www.westonfl.org/government/procurement>. Bid documents are also available for electronic download from Demand Star at <http://www.demandstar.com>.

Bids shall be submitted on the form(s) provided. The required sections of the Project Manual shall be submitted as part of the Bid.

EXPERIENCE

Along with the sealed bids, all Bidders shall provide the necessary documentation to demonstrate that they meet the following qualifications: i) Bidders shall have been incorporated and in continuous operation for a minimum of the past five (5) years immediately preceding the date that the Bid is issued; ii) Bidders shall be fully licensed general contractors with all required State and/or

local government licenses—copies of the licenses shall be provided; and iii) Bidders shall provide evidence of the successful completion of projects of similar size and scope with at least three (3) projects within the last five (5) years immediately preceding the date that the Bid is issued.

BID PROCEDURES

Each bid shall be submitted in a separate plain sealed parcel, box or other secure packaging, marked as the "Bid". The outside of the sealed package must clearly indicate the submission of **Bid No. 2024-01, Pavilion Replacements – Library Park**, Bidder's name, address and the name, telephone number and email address of the Bidder's specific contact person. Attach a copy of the contact person's business card. **The bid submittal shall contain one (1) unbound original and one (1) digital copy in Adobe PDF format on a CD/USB drive and is required to be submitted to the CITY by the Submittal Deadline.** Bids shall be submitted on the form(s) provided in the bid.

All written or graphical work product provided to the City in PDF format shall be fully ADA compliant with the latest ADA regulations.

All Bidders are advised that the CITY has not authorized the use of the City seal by individuals or entities responding to CITY Request for Bid, and that any such use by unauthorized persons or entities constitutes a second-degree misdemeanor pursuant to Section 165.043, Florida Statutes.

All Bidders are advised that the CITY will not supply or sell materials to Bidders in connection with submission or preparation of Bids, or any other matter, including but not limited to envelopes, labels or tape.

Once a Bid has been submitted to the Director of Procurement by the Bid Submittal Deadline, it shall not be returned to the Bidder. Bids received after the Bid Submittal Deadline will be returned unopened.

The withdrawal, modification or correction of a Bid after it has been submitted to the CITY shall constitute a breach by the Bidder.

All Bids shall be guaranteed firm for a minimum of 90 calendar days after the submission of the Bid. No Bidder may withdraw its Bid within 90 calendar days after the Bid opening date.

The Sealed Bids will be publicly opened at the City of Weston, City Hall after the Bid Submittal Deadline. Award of the Bid will be made at a City Commission meeting.

BID SECURITY

Bid security in the form of a Bid Bond acceptable to the CITY or Cashier's Check made payable to the "City of Weston" in the amount of \$5,000.00 or 5% percent of the Bid amount, whichever is greater, will be required, to be submitted with the Bid.

QUESTIONS

Any questions concerning this Notice to Bidders shall be submitted in writing to the **Director of Procurement, Martha Perez-Garviso at mperezgarviso@westonfl.org, with "Bid No. 2024-01,**

Pavilion Replacements – Library Park” in the subject line by 4:00 p.m., local time at least five business days prior to the submittal deadline.

A Cone of Silence is imposed upon publication of this Notice to Bidders. The Cone of Silence prohibits communications with the following individuals pertaining to this bid:

Margaret Brown, Mayor,
Byron L. Jaffe, Commissioner,
Mary Molina-Macfie, Commissioner,
Chris Eddy, Commissioner, and
Henry Mead, Commissioner

Cindy Tao, Director of Accounting, Selection Committee Member;
Bryan Cahen, Director of Budget, Selection Committee Member;
Pamela Solomon, Assistant Director of Communications, Selection Committee Member;
Ryan Fernandes, Director of Technology Services, Alternate Selection Committee Member; and

Any member of the Protest Committee, if and when established.

The details of the CITY’s Cone of Silence are set forth in Section 32.10 of the City Code.

The Selection Committee shall convene at a publicly noticed meeting and review submissions, rank and evaluate the Bids and provide a recommendation to the City Manager.

RIGHTS RESERVED

The CITY (through the City Commission, City Manager, Selection Committee or Protest Committee) reserves the right to:

- A. Reject any or all bids;
- B. Waive any informality in a bid;
- C. Waive any deficiency or irregularity in the selection process;
- D. Accept or reject any or all bids in part or in whole; and
- E. Request additional information as appropriate.

The City Commission reserves the right to:

- A. Award all or a portion of the services set forth in the bid as determined to be in the best interest of the CITY;
- B. Reject any or all bids if found by the City Commission not to be in the best interest of the CITY;
- C. Award an Agreement to one or more than one bidder, make split or multiple awards as determined to be in the best interest of the CITY; and
- D. In the event of a sole bid, reject the sole bid.

Martha Perez-Garviso
Director of Procurement
City of Weston

Published: January 9, 2024

Document 00100

INSTRUCTIONS TO BIDDERS

ARTICLE 1.0
DEFINITION OF TERMS

- 1.1 **Addenda:** A written and/or graphic document issued by the CITY prior to the opening of the Bid to modify or interpret any portion of the Work, Project or bid documents.
- 1.2 **Additive Alternates:** Work items added to the Bid Base, at CITY's discretion.
- 1.3 **Bid Base:** The amount stated on the Bid Form without Additive or Deductive Alternates for which the Bidder offers to perform the Work as described in the Project Manual. The Bid Base must be based on the estimated quantities of the bid.
- 1.4 **Bidder:** A person or entity that timely submits a Responsive/Responsible Project bid.
- 1.5 **Business Day:** Monday through Friday, excluding CITY observed holidays, between the hours of 8:00 a.m. and 5:00 p.m. local time.
- 1.6 **Calendar Days:** Consecutive days of the week or month, without regard to weekends and holidays.
- 1.7 **CITY:** The City of Weston, Florida and its dependent districts.
- 1.8 **Consultant/Project Consultant:** Shall both mean the person or entity designated by the CITY as responsible for providing engineering and inspection services for the Project.
- 1.9 **Deductive Alternates:** Work items removed from the Bid Base at the CITY's discretion.
- 1.10 **Lowest Responsive/Responsible Bidder:** means the person or entity who has submitted a Bid that conforms in all material respects to the Project Manual and whose Overall Bid price, including all cost to the CITY, is the lowest price for the Project, as determined at CITY's sole discretion.
- 1.11 **Notice of Intent to Consider Award:** a notice posted by the CITY stating the recommendation to the Commission of which Bidder is the Lowest Responsive/Responsible Bidder.
- 1.12 **Overall Bid:** The amount stated on the Bid Form with additive and/or deductive alternates, as selected by the CITY, at time of award for which the Bidder offers to perform the Work as described in the Project Manual.
- 1.13 **Project:** Shall have the same meaning as "Work" and may be used interchangeably.

- 1.14 **Project Manual:** This includes the Notice To Bidders, Instructions To Bidders, Bid Form, Contractor's Qualification Statement, Bid Security/Bond, Addenda, Agreement, General Conditions, Supplemental Conditions, Bonds, Certification of Payment Forms, Consent of Surety, Project Closeout, Closeout Package Checklist, Specifications and Drawings, all of which shall also constitute the bidding documents.
- 1.15 **Protest Committee:** Shall review all protests. The City Manager shall appoint the members of the Protest Committee. No member of the City Commission shall serve on the Protest Committee.
- 1.16 **Selection Committee:** Shall examine the documentation submitted in the Bid to determine the responsiveness of each Bid and the responsibility of each Bid, and from that determination make a recommendation of award to the responsive/responsible Bidder whose Bid has the lowest cost.
- 1.18 **Unit Price Bid:** The amount(s) stated in the Bid Form as a price per unit of measurement for materials, equipment and/or labor as described in the Project Manual.
- 1.19 **Work:** Shall include all aspects of the construction project proposed in the Project Manual and other bidding documents.

ARTICLE 2.0 **PUBLIC ENTITY CRIMES STATEMENT**

- 2.1 In accordance with §287.133 (2) (a) Florida Statutes, a person or affiliate who has been placed on the convicted CONTRACTOR list maintained by the Florida Department of Management Services 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 to 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 or supplier, subcontractor, or consultant under contract with the CITY , and may not transact business with the CITY in excess of the threshold amount provided in §287.017, Fla. Stat., for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted CONTRACTOR list.
- 2.2 By submitting a response, the CONTRACTOR certifies that it is qualified under Section §287.133, Florida Statutes, to provide the services set forth in the Agreement.

ARTICLE 3.0 **QUALIFICATION OF BIDDERS**

- 3.1 When included in the bidding documents, the Bidder shall complete the CONTRACTOR'S QUALIFICATION STATEMENTS, along with any other evidence of his satisfactory experience and ability to perform the proposed Work. The failure of Bidder to demonstrate successful performance of projects of a similar magnitude, scope, value and trade as this project may be deemed to be grounds for declaring the Bidder to be non-responsible.

- 3.2 If requested by the CITY, the Bidder shall submit a certified financial statement, prepared within 30 days of submission of the bid proposal, indicating current financial resources, liabilities, capital equipment, and financial history performance.
- 3.3 Bidders shall be disqualified and their unopened Bids shall be rejected for any of the following specific reasons:
- A. Reason to believe that collusion exists among the Bidders.
 - B. The Bidder is involved directly or indirectly in litigation or arbitration against the CITY within the past 5 years.
 - C. The Bidder has defaulted on any previous Contract with the CITY within the past 5 years or is in arrears on an existing Contract.
 - D. The submittal of more than one Bid from an individual, firm, partnership, corporation or association under the same or different names. All parties shall be disqualified.
 - E. Untimely bid proposals shall be automatically and absolutely disqualified and returned unopened. Excuses for the untimely submittal shall not be accepted. The time as documented by the official clock at the City Hall reception desk shall determine the timeliness of the Bid. The official clock at the City Hall reception desk shall control.
- 3.4 Bidders may be deemed to be non-responsible and their Bids may be rejected for any of, but not limited to, the following reasons:
- A. Determination of a lack of competency as may be revealed by qualification statements, financial statements, experience records or other questionnaires.
 - B. The Bidder's uncompleted or pending workload on other projects, which in the judgment of the CITY may cause detrimental impact on timely completion of the Work.
 - C. The appearance of an unbalanced bid proposal, as determined by the CITY.
 - D. If the Bidder makes false statements or provides false information to any portion of the bidding documents.
 - E. If the Bidder fails to demonstrate successful performance of projects of a similar magnitude, scope, value and trade as this project.
- 3.5 Bidders may be deemed to be non-responsive and their Bids may be rejected for any of, but not limited to, the following reasons:
- A. If the Bidder fails to submit a complete Bid.
 - B. If the Bidder fails to abide by any of the provisions of the Bid documents.

- 3.6 Bids submitted will be examined by a three (3) member Selection Committee ("Selection Committee") who will review submissions to determine the responsiveness and responsibility of each bid in accordance with ARTICLE 3.0 above and provide a recommendation to the City Manager.

The Selection Committee shall examine the documentation submitted in the bid to determine the responsiveness of each Bidder. Failure to provide the required information may disqualify any such bid as non-responsive and such bid will not be considered. The Selection Committee will disqualify any bidders that make exaggerated or false statements.

The evaluation of bid and the determination of conformity and acceptability shall be the sole responsibility of the Selection Committee. Such determination shall be based on information furnished by the Bidder, as well as other information reasonably available to the CITY.

The Selection Committee reserves the right to make additional inquiries, make site visits, or any other action it deems necessary to fairly evaluate all Bidders.

ARTICLE 4.0 **SUBMISSION AND RECEIPT OF BIDS**

- 4.1 It shall be the sole responsibility of the Bidder to have his Bid delivered, whether by hand, U.S. Mail, or other delivery service, to the City Clerk before the closing hour and date shown for the receipt of Bids, the Bid Submittal Deadline. Bids thus delayed shall not be considered and shall be returned unopened.
- 4.2 Bidders shall use the Bid Form furnished by the CITY, shall submit only one Bid, shall fill in all blank spaces in the Bid, shall not remove any part of the Project Manual, other than Volume 1, and shall return Volume 1 of the Project Manual; failure to do so may cause the Bid to be non-responsive and thereby rejected.
- 4.3 Bidding documents shall be completed in ink or typewritten, and all signatures shall be in blue ink. Bidding documents having any erasures or corrections shall be initialed by the Bidder in blue ink.
- 4.4 Bid Base Amounts shall be in both words and numerals, and in case of a discrepancy between the two, the amount written in words shall govern.
- 4.5 In the event of a mathematical error in the extension of unit price, or addition of total price, the unit price shall prevail.
- 4.6 Each bid shall be signed with the firm name by an officer or an employee having the authority to bind the company or firm by his signature; failure to do so may cause the Bid to be invalid and thereby rejected.
- 4.7 The CITY will not supply or sell materials to Bidders, in connection with submission or preparation of Bids, or any other matter, including but not limited to envelopes, labels or tape.

ARTICLE 5.0
MODIFICATION AND WITHDRAWAL OF BID

Prior to the time of Bid opening, a Bidder may withdraw his Bid at any time, by submitting a Notice of Withdrawal of Bid letter, but may not resubmit it. Such Bid shall be returned to the Bidder subsequent to the Bid opening. Bids may not be modified after submittal. After the Bid opening, no Bid may be withdrawn, cancelled or modified for a period of 60 days after the time and date designated for the receipt of Bids.

ARTICLE 6.0
OPENING OF BIDS

All Bids submitted will be publicly opened at the City of Weston, City Hall, located at, 17200 Royal Palm Boulevard, Weston, Florida, on the date and at the time stated in the Notice to Bidders, or as may be amended by addendum.

ARTICLE 7.0
BIDDING DOCUMENTS

- 7.1 Complete sets of bidding documents may be obtained from the CITY or the CITY's Consultant, identified in the Notice to Bidders.
- 7.2 Complete sets of bidding documents shall be used by Bidders in preparation of Bids; neither the CITY or the CITY's Consultant assume any responsibility for errors or misrepresentations resulting from the use of incomplete sets.
- 7.3 It shall be the Bidder's responsibility to become thoroughly familiar with the bidding documents prior to the submittal of the Bid; no allowance shall be made by the CITY for the Bidder's failure to do so.

ARTICLE 8.0
EXAMINATION OF CONDITIONS

It shall be the Bidder's responsibility to submit the Acknowledgment of Inspection Form and visit the proposed Project site and to thoroughly familiarize himself with the nature and extent of the work to be performed and all local existing site conditions, to make his own estimate of the facilities and difficulties attending the execution of the Work; no allowance shall be made by the CITY for the Bidder's failure to do so.

ARTICLE 9.0
PRICES TO BE FIRM

The Bidder warrants by virtue of his Bid that the prices, terms and conditions contained herein shall be firm for a period of not less than 90 calendar days from the date of the Bid opening.

ARTICLE 10.0
DEFAULT PROVISION

In the event of default by the Bidder, the CITY may procure the goods and/or services from other sources and hold the Bidder responsible for any excess costs, including but not limited to Project costs and administrative and legal fees, incurred as a result of the Bidder's default. The CITY may take such action, as it deems appropriate, legal or otherwise, for damages and/or specific performance.

ARTICLE 11.0
SIGNED BID CONSIDERED AN OFFER

The signed Bid shall be considered an offer on the part of the Bidder, which offer shall be deemed irrevocable upon submittal and accepted upon award by the City Commission.

ARTICLE 12.0
TAXES

The CITY is exempt from State of Florida Sales Tax, and is exempt from certain other taxes imposed by the State and/or Federal governments. The CITY's exemption status and privilege cannot be used by the CONTRACTOR and shall not be relied upon for this Project.

ARTICLE 13.0
LAWS AND REGULATIONS

All applicable laws and regulations of the Federal Government, State of Florida, Special Districts, and ordinances of Broward County and the CITY shall apply to any Contract awarded as a result of this Bid. The laws of the State of Florida shall govern any contract awarded as a result of this Bid.

ARTICLE 14.0
QUANTITIES

- 14.1 The quantities shown herein are estimated only. No guarantee or warranty is given or implied by the CITY as to the total amount that may or may not be awarded or purchased from any resulting Contract.
- 14.2 The CITY reserves the right to increase and/or decrease the quantities at the time of award and for the duration of the Contract at the firm Unit Prices Bid herein.
- 14.3 The quantities contained herein are for the Bidder's information only and will be used for tabulation and determination of the overall lowest responsive and responsible Bidder.

ARTICLE 15.0
QUALITY

All items used in the manufacture or construction of any supplies, materials or equipment covered by this Bid shall be new, not used, remanufactured or demonstrator. The item(s) bid or the components of the item(s) bid shall be the current model, or of the best quality and highest grade workmanship unless otherwise specified herein.

ARTICLE 16.0
MATERIAL SAMPLES

Material Samples, when requested, shall be furnished prior to or at the Bid opening unless otherwise specified, and shall be delivered and retrieved free of expense to the CITY and if not used in testing or destroyed, will be upon written request of the Bidder within ten (10) calendar days of the Bid award returned.

ARTICLE 17.0
BRAND NAMES

Whenever proprietary names are specified, whether or not followed by the words "or equal", it shall be subject to equals as approved and accepted as "equal" by the CITY, as it shall be the CITY's prerogative to select which items are the lowest bid, item by item, meeting specifications from the information furnished by the Bidder with his Bid and/or sample inspection and/or testing of the items specified herein.

ARTICLE 18.0
ACCEPTANCE OF MATERIAL

The materials delivered under this Bid shall remain the property of the CONTRACTOR until accepted to the satisfaction of the CITY. All materials shall comply with the items herein and the specifications. In the event the material and/or service supplied to the CITY is found to be defective or does not conform to the specifications, the CITY reserves the right to cancel the order upon written notice to the CONTRACTOR and return the product to the CONTRACTOR at the Contractor's expense, or cease use of the service, without any obligation.

ARTICLE 19.0
DELIVERY

- 19.1 All items shall be freight on board (f.o.b.) delivered with freight charges prepaid and included in the total cost, to the address in the City of Weston as specified by the CITY.
- 19.2 Time will be of the essence for any orders placed as a result of this Bid. The CITY reserves the right to cancel such order(s) or part(s) thereof without obligation if delivery is not made at the time(s) specified herein and hold the CONTRACTOR in default.

ARTICLE 20.0
MANUFACTURER'S CERTIFICATION

The CITY reserves the right to request from Bidder(s) separate manufacturer's certification of all statements made in the Bid.

ARTICLE 21.0
COPYRIGHTS AND PATENT RIGHTS

The Bidder warrants that there has been no violation of copyrights and patent rights in manufacturing, producing or seeing the goods and/or services ordered as a result of this Bid, and the Bidder agrees to hold the CITY, its officers, employees and agents harmless from all liability, losses or expenses from such violation.

ARTICLE 22.0
MATERIAL SAFETY DATA SHEETS

The Bidder shall include with his Bid, when applicable, manufacturer's Material Safety Data Sheets (MSDS) for those items required to have an MSDS by Federal law.

ARTICLE 23.0
FLORIDA TRENCH SAFETY ACT

The Bidder shall include with his Bid, when applicable, all documentation required by the Florida "Trench Safety Act", Section 553.63 Florida Statutes. The unit prices and total prices presented in the Bid, and those presented in any subsequent change orders shall include the Bidder's cost for compliance with the applicable trench safety standards.

ARTICLE 24.0
CONFLICT OF INSTRUCTIONS

If a conflict exists between the general conditions and the instructions stated herein and the specific conditions and the instructions, the CITY's interpretation shall govern.

ARTICLE 25.0
INTERPRETATION OF BIDDING DOCUMENTS
QUESTIONS AND ANSWERS

- 25.1 All questions requiring clarification or interpretation of the bidding documents shall be made in writing and shall reach the CITY and its Consultant at least five (5) Business Days prior to the date for receipt of Bids. No questions shall be responded to during the five (5) Business Days prior to the date for receipt of Bids.

- 25.2 Questions regarding the Notice to Bidders, Instructions to Bidders, Bid Form, Bid Security, Contractor's Qualification Statement, Agreement Between CITY and CONTRACTOR, Bonds, Insurance, General Conditions and Supplemental Conditions shall be directed to the CITY. Questions relating to Soil Investigation Data, Material/Equipment Substitutions Technical Specifications, and plans and drawings shall be directed to the Consultant, when applicable. Any modification or interpretation of the bidding documents, is the sole and exclusive judgment of the CITY or its Consultant, shall be made in writing in the form of an Addendum to all those who are recorded by the CITY or its Consultant as having a complete set of bidding documents.
- 25.3 Interpretations or modifications of the bidding documents made in any manner other than an Addendum issued by the CITY or its Consultant shall not be binding.
- 25.4 A Bidder, prior to submitting his Bid, shall ascertain that he has received all Addenda issued, and shall acknowledge their receipt in the Bid Form.
- 25.5 Costs for those matters not questioned and not responded to by Addendum shall be the responsibility of the Bidder to include such costs in his Bid.

ARTICLE 26.0 **SUBSTITUTIONS**

The Bidder represents that his Bid is based upon the materials, equipment and services described in the bidding documents. Requests for substitutions, unless otherwise stated, will be considered in the same manner as SECTION 25.0 INTERPRETATION OF BIDDING DOCUMENTS.

ARTICLE 27.0 **RESERVATIONS FOR REJECTIONS AND AWARD**

- 27.1 The CITY (through the City Commission, City Manager, Selection Committee or Protest Committee) reserves the right to:
- A. Reject any or all bids;
 - B. Waive any informality in a bid;
 - C. Waive any deficiency or irregularity in the selection process;
 - D. Accept or reject any or all bids in part or in whole; and
 - E. Request additional information as appropriate.
- 27.2 The City Commission reserves the right to:
- A. Award all or a portion of the services set forth in the bid as determined to be in the best interest of the CITY;
 - B. Reject any or all bids if found by the City Commission not to be in the best interest of the CITY;

- C. Award an Agreement to one or more than one bidder, make split or multiple awards as determined to be in the best interest of the CITY; and
- D. In the event of a sole bid, reject the sole bid.

ARTICLE 28.0
CONTRACT AWARD AND EXECUTION

- 28.1 Until final award of Contract, the CITY reserves the right to reject bids, with or without cause and to waive any informality or irregularity.
- 28.2 Upon acceptance of a Bid and award of the contract, the successful Bidder shall deliver the executed Contract, along with required bonds and any other items requested, to the CITY within fourteen (14) Calendar Days. Failure to do so will be deemed as a breach of agreement by the Bidder, result in forfeiture of bid security as described in the Instructions to Bidders and may result in CITY's cancellation of the award of the Contract. If the CITY determines that the Contract, required bonds or any other requested items are not properly executed, completed or provided, CITY shall notify CONTRACTOR of such deficiency, after which CONTRACTOR shall have seven (7) Calendar Days to cure such deficiency. Failure to do so will also be deemed as a breach of agreement by the Bidder, result in forfeiture of bid security and may result in CITY's cancellation of the award of the Contract.
- 28.3 The CITY reserves the right to hold all bid proposals and bid guarantees for a period not to exceed 90 days after the date of bid opening stated in the Notice to Bidders.
- 28.4 In no case will the award be made until all necessary investigations have been made into the responsibility of the low bidder and the CITY is satisfied that the bidder is qualified to do the Work and has the necessary organization, capital and equipment to carry out the provisions of the contract within the time specified.

ARTICLE 29.0
BID PROTEST PROCEDURE

- 29.1 **Standing:** Parties that are not actual bidders, including, but not limited to, subcontractors, material and labor suppliers, manufacturers and their representatives, shall not have standing to protest or appeal any determination made pursuant to this Section.
- 29.2 **Protest of Failure to qualify.** Upon notification by the CITY that a bidder is deemed non-responsive and/or non-responsible, the bidder who is deemed non-responsive and/or non-responsible may file a protest with the City Clerk by close of business on the third Business Day after notification (excluding the day of notification) or any right to protest is forfeited. (City Hall hours are as follows: Monday-Thursday from 8:00 a.m. to 5:30 p.m. and Friday from 8:00 a.m. to 3:00 p.m.)
- 29.3 **Protest of Award of Agreement:** After a Notice of Intent to Consider Award an Agreement is posted, a Bidder who is aggrieved in connection with the pending award of the Agreement or any element of the process leading to the award of the Agreement may file a protest with the Office of the City Clerk by close of business on the third Business Day after

posting (excluding the day of posting) or any right to protest is forfeited. A Notice of Intent to Consider Rejecting all Bids is subject to the protest procedure.

- 29.4 **Content and filing:** The protest shall be in writing, shall identify the name and address of the protester, and shall include a factual summary of, and the basis for, the protest. Filing shall be considered complete when the protest and the Protest Bond are received by the Office of the City Clerk. The official clock at the City Hall reception desk shall govern.
- 29.5 **Protest Bond:** A Bidder filing a Protest of Failure to Qualify and/or a Protest of Award of Agreement shall simultaneously provide a Protest Bond to the CITY in the amount of \$10,000 or 2% of the proposal value, whichever is greater, for each protest. If the protest is decided in the protester's favor, the entire Protest Bond shall be returned to the protester. If the protest is not decided in the protester's favor, the Protest Bond shall be forfeited to the CITY. The Protest Bond shall be in the form of a cashier's check.
- 29.6 **Protest Committee:** The Protest Committee shall review all protests. The City Manager shall appoint the members of the Protest Committee. No member of the City Commission or the Selection Committee shall serve on the Protest Committee. Each Protest Committee member shall complete and execute an independence affidavit. The City Attorney or designee shall serve as counsel to the Committee. The meeting of the Protest Committee shall be open to the public and all of the actual bidders shall be notified of the date, time and place of the meeting. If the Protest Committee determines that the protest has merit, the City Manager shall direct that all appropriate steps be taken. If the Protest Committee denies the protest, the protester may appeal to the City Commission. All of the actual bidders shall be notified of the determination by the Protest Committee. The Protest Committee shall terminate upon the award of the Agreement, or such other time as determined by the City Commission.
- 29.7 **Stay of award of Agreement or Bid Process:** In the event of a timely protest, the City Manager shall stay the award of the Agreement or the Bid process unless the City Manager determines that the award of the Agreement without delay or the continuation of the Bid process is necessary to protect any substantial interest of the CITY. The continuation of the Bid process or award under these circumstances shall not preempt or otherwise affect the protest.
- 29.8 **Appeals to City Commission:** Any actual Bidder who is aggrieved by a determination of the Protest Committee may appeal the determination to the City Commission by filing an appeal with the Office of the City Clerk by close of business on the third Business Day after the protester has been notified (excluding the day of notification) of the determination by the Protest Committee. The appeal shall be in writing and shall include a factual summary of, and the basis for, the appeal. Filing of an appeal shall be considered complete when the appeal is received by the Office of the City Clerk.
- 29.9 **Failure to file protest.** Any actual Bidder that does not formally protest or appeal in accordance with this Section shall not have standing.

ARTICLE 30.0
SECURITY

- 30.1 **Bid Security:** Simultaneous with the delivery of an executed Bid to the CITY, when required, the Bidder shall furnish to the CITY a Bid Security in the amount specified in the Bid as security for the faithful execution of a contract with the CITY in the event of such award by the City Commission.
- 30.2 Bid security may be in the form of a cashier's check payable to the City of Weston and drawn on a bank, authorized to do business in the State of Florida, or a Bid Bond issued by a surety meeting the qualifications stated herein. **Bonds shall be submitted on the forms provided by the CITY.** Bonds shall be returned subsequent to award of the contract by the City Commission and execution by the successful Bidder and the appropriate CITY officials.
- 30.3 Failure by the successful Bidder to execute a Contract, to furnish Performance and Payment Bonds when required, and to furnish Certificates of Insurance in the minimum amounts specified in the Bid, shall be just cause for the rescission of the award and the retention of the Bid Security by the CITY. Such retention shall be considered not as a penalty, but as liquidation for damages sustained. Award may then be made to the next ranked Bidder, or all Bids may be rejected.
- 30.4 **Performance Bond and Payment Bond:** Simultaneous with the delivery of the executed contract to the CITY, the CONTRACTOR shall furnish an executed Performance and Payment bond in an amount equal to one hundred percent (100%) of the contract value, as security for the faithful performance of contract and for the payment of all persons performing labor and/or furnishing materials in connection with the Project. **Bonds shall be submitted on the forms provided by the CITY.** The condition of this obligation is such that, if the CONTRACTOR shall promptly and faithfully perform said contract, make payments to all claimants for all labor and material used or reasonably required for use in the performance of the Contract, and shall fully indemnify and save harmless the CITY and its agents and/or service provider for all costs and damages he may suffer by reason of failure to do so, then this obligation shall be null and void; otherwise it shall remain in full force and effect.
- 30.5 **Warranty Bond:** The CONTRACTOR shall furnish a Warranty Bond in the amount of ten percent (10%) of the actual cost of the Work, upon acceptance of said Work by the CITY. Such Bond shall be submitted on the form, Document 00910, contained in the Project Manual.
- 30.6 **Qualifications of Surety:** Surety companies issuing Bid Bonds, Performance Bonds, Payment Bonds and Warranty Bonds shall fulfill **each** of the following provisions, and the Bidder shall provide evidence to document such fulfillment:
- A. The surety company is licensed to do business in the State of Florida.
 - B. The surety company holds a currently valid certificate of authority authorizing it to write surety bonds in the State of Florida.

- C. The surety company has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.
- D. The surety company is otherwise in compliance with the provisions of the Florida Insurance Code.
- E. The surety company holds a currently valid certificate of authority issued by the United States Department of the Treasury under 31 U.S.C. § 9304-9308.
- F. Each bond shall contain all provisions required by § 255.05, Florida Statutes, as may be amended from time to time.
- G. Each bond shall be issued by a Florida resident agent.
- H. Qualifications: As to companies being rated acceptable:

A Bid Bond and Performance, Payment and Warranty Bond must be executed by a Surety Company of recognized standing, authorized to do business in the State of Florida and having been in business with a record of successful continuous operation for at least (5) years.

In addition to the above minimum qualifications, the Surety Company must meet the following additional qualifications.

The Surety Company shall meet a minimum financial AM Best Company rating of no less than **"A- Excellent: FSC VII"** and shall have at least the following minimum Policyholders ratings: A- Class VII or higher. In the event that the Surety Company's rating shall drop, the Surety Company shall immediately notify the CITY.

All Surety Companies are subject to review and approval by the CITY and may be rejected without cause. All bonds signed by an Agency must be accompanied by a certificate of authority to act.

When the contract amount of the Project does not exceed \$500,000.00, surety companies issuing Bid Bonds, Performance Bonds, Payment Bonds and Warranty Bonds shall fulfill **each** of the following provisions, and the Bidder shall provide evidence to document such fulfillment:

- A. The surety company is licensed to do business in the State of Florida.
- B. The surety company holds a certificate of authority authorizing it to write surety bonds in the State of Florida.
- C. The surety company has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.
- D. The surety company is otherwise in compliance with the provisions of the Florida Insurance Code.

- E. The surety company holds a currently valid certificate of authority issued by the United States Department of the Treasury under 31 U.S.C. ss. 9304-9308.

30.7 **Duration of Bonds:** Performance Bonds and Payment Bonds shall remain in force until acceptance of Work; however, if the Contract is terminated, they shall remain in force for 1 year from the date of termination of this Contract as protection to the CITY against losses resulting from latent defects in materials or improper performance of work under the Contract that may appear or be discovered during that period. Warranty Bonds shall remain in force for one (1) year from the date of acceptance of the Work.

30.8 **Non-compliance:** Contractor's failure to deliver executed Performance Bond, Payment Bond and Warranty Bond in a form acceptable to the CITY shall constitute a material breach of the Contract and shall relieve the CITY of all payment obligations until such bonds are provided and shall result in the Contractor's forfeiture of any and all bid securities.

30.9 **Exemption of Requirements for Bonds:** Pursuant to §255.05, Florida Statutes, as may be amended from time to time, if the construction contract with the CITY is for \$200,000.00 or less, the CONTRACTOR may be exempted from executing the statutorily required performance and payment bonds, "at the discretion of the official or board awarding such contract when such work is done for any County, CITY, etc."

A. The CITY reserves the right to exempt, or not to exempt, the requirement of Performance Bonds and Payment Bonds. The CITY may choose to bond any such construction project for \$200,000.00 or less.

B. In the event the CITY exempts the Performance Bond and Payment Bond requirements, the CITY's elected officials, employees, agents or consultant shall not be personally liable to persons suffering loss because of granting such an exemption.

C. CONTRACTOR shall include the cost of providing such bonds in Document 00300, the Bid Form.

ARTICLE 31.0 **INSURANCE**

31.1 Insurance:

A. Before performing any Work, CONTRACTOR shall procure and maintain, during the life of the contract, unless otherwise specified, insurance listed below. The policies of insurance shall be primary and written on forms acceptable to the CITY and placed with insurance carriers approved and licensed by the Insurance Department in the State of Florida and meet a minimum financial AM Best Company rating of no less than "A- Excellent: FSC VII." In the event that the insurance carrier's rating shall drop, the insurance carrier shall immediately notify the CITY. No changes shall be made to these specifications without prior written specific approval by the CITY.

- B. All policies required by this contract, with the exception of Workers' Compensation, or unless specific approval is given by the CITY, are to be written on an occurrence basis, shall name "City of Weston" as Additional Insured during the project and for a minimum of five (5) years following the project completion and acceptance by the CITY or no more restrictive than ISO form CG 20 37 (07 04). Waiver of subrogation in favor of the City of Weston is required on all policies except Workers' Compensation. The CITY shall be named as additional insured on all policies except worker's compensation and professional liability.
- C. Any person, organization, vehicle, equipment, or other person or property fulfilling this Agreement is bound by these insurance requirements.
- D. Any changes to these specifications shall be at the sole and exclusive discretion of CITY.
- E. CITY retains the right to review, at any time, policies, coverage, applicable forms/endorsements, and amounts of insurance.
- F. CONTRACTOR is responsible for repairing or replacing any damage to structures unless otherwise addressed within this Agreement.
- G. Insurance shall not be suspended, voided or canceled except after 30 calendar days prior written notice by certified mail, return receipt requested, has been given to CITY, except the cancellation notice period for non-payment of premiums shall be 10 days.
- H. Certificates of Insurance evidencing conditions to this Agreement are to be furnished to City of Weston, 17200 Royal Palm Boulevard, Weston, FL 33326.
- I. Notices of Accidents (occurrences) and Notices of Claims associated with work being performed under this Agreement shall be provided to Contractor's insurance company and CITY as soon as practicable after notice to the insured.
- J. Proposer agrees by entering into a written Agreement that the insurance policies provided will include a Waiver of Subrogation in favor of CITY. Proposer's insurance shall be Primary and non-contributory.
- K. Proposer is responsible for any costs or expenses below deductibles, self-insured retentions, coverage exclusions or limitations, or coinsurance penalties.

31.2 Specific Coverage:

- A. Workers Compensation: Proposer shall provide statutory workers' compensation, and employer's liability insurance with limits of not less than \$1,000,000 per employee per accident, \$1,000,000 disease aggregate and \$1,000,000 per employee per disease for all personnel on the worksite. If applicable, coverage for the Jones Act and United States Longshoremen and Harborworkers exposures must also be included. Elective exemptions shall NOT satisfy this requirement. Certificates evidencing an employee

leasing company as employer shall not be accepted). In the event Proposer has "leased" employees, Proposer must provide a workers' compensation policy for all personnel on the worksite. All documentation must be provided for review and approval by CITY.

Proposer is responsible for the Workers' Compensation of any and all subcontractors, including leased employees, used by Proposer. Evidence of workers' compensation insurance coverage for all subcontractors, including leased employees, must be submitted prior to any work being performed.

- B. Commercial General Liability: Proposer shall provide evidence of commercial general liability on an occurrence Form no more restrictive than ISO form CG 2010, and including but not limited to bodily injury, property damage, contractual liability, products and completed operations (without limitation), and personal and advertising injury liability with limits of not less than \$2,000,000 each occurrence, and \$5,000,000 in aggregate, covering all work performed under this Agreement.
- C. Business Automobile Liability: Proposer shall provide evidence of business automobile liability on a standard ISO form, and including per occurrence limits of not less than \$1,000,000 covering all work performed under this Agreement. Coverage shall include liability for owned, non-owned & hired automobiles. If private passenger automobiles are used in the business, they shall be commercially insured.
- D. Umbrella or Excess Liability: Umbrella policies are acceptable to provide the total required general liability, automobile liability, and employers' liability limits. Umbrella policies shall also name CITY as additional insured and coverage shall be provided on a "Follow Form" basis.
- E. Subcontractors: Insurance requirements itemized in this contract and required of Proposer shall be provided on behalf of all subcontractors to cover their operations performed under this Agreement. Proposer shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.
- F. Builders' Risk – Property Coverage: a special form coverage shall include, but not be limited to:
 - 1. Storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project.
 - 2. Theft coverage.
 - 3. Waiver of Occupancy Clause endorsement, which will enable the CITY to occupy the facility under construction/renovation during such activity.
 - 4. Limits of insurance to equal 100% of the insurable completed contract amount of such addition(s), building(s) or structure(s), on an agreed

amount/replacement cost basis, and Maximum deductible clause of \$10,000 each claim; exceptions may be made for Windstorm and Flood deductibles.

- G. Builders' Risk – Installation Coverage: For installation, CONTRACTOR must provide Builders' Risk installation coverage to include coverage for materials stored at the project site, property while in transit, and property stored at a temporary location for the amount of materials involved in this contract.

- 31.3 **Insurance Requirement:** Within 14 calendar days of the date of the award of the bid by the City Commission, the lowest responsive/responsible Bidder, (the "Apparent Low Bidder") shall furnish to the CITY proof of insurance, as required herein.

ARTICLE 32.0
DETERMINATION OF APPARENT LOW BIDDER

Subsequent to the submission of Bids, the Selection Committee shall make a recommendation of the lowest responsive/responsible Bidder, (the "Apparent Low Bidder") Apparent Low Bidder. Upon such determination, the CITY shall notify the Apparent Low Bidder a "Notice of Intent to Consider Award."

ARTICLE 33.0
CONE OF SILENCE

- 33.1 Pursuant to Section 32.10 of City Code, there shall be no communication related to this Bid between bidders, including any lobbyist or any other person on behalf of proposers, and any member of City Commission, or any member of the Selection Committee or Protest Committee (starting from the appointment of that Protest Committee Member), if any.
- 33.2 The cone of silence shall not apply to written or oral communications with legal counsel for the CITY.
- 33.3 This Article shall not prohibit any Person from:
 - A. Making public presentations at pre-bid conferences or, to the Selection Committee or to the Protest Committee, or to the City Commission, during any public meeting related to this Bid;
 - B. Engaging in any negotiations at a meeting of the Selection Committee, or with the City Commission during a public meeting.; or
 - C. Communicating in writing with the person designated in this Bid as the Technical Advisor for clarification or information related to this Bid. The written communication, including any response thereto, shall be provided to any Bidder that has submitted a Bid.
- 33.4 A cone of silence shall begin when first publicly noticed, and shall terminate upon execution of the Agreement, a decision by the City Commission to reject all bids, or the taking of other action that ends this Bid solicitation.

- 33.5 Any action in violation of this Article may be cause for disqualification of the Bidder. The determination of a violation and/or disqualification shall be made by the City Commission.

ARTICLE 34.0
SCRUTINIZED COMPANIES

- 34.1 Pursuant to Section 287.135, Florida Statutes, a Proposer is ineligible to, and may not submit a Proposal for, or enter into or renew a contract with CITY for goods or services if at the time of submitting a Proposal for a new contract or renewal of an existing contract:
- A. for any contract amount, if the Proposer is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel;
 - B. if \$1 million or more and the Proposer is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or
 - C. if \$1 million or more and the Proposer is engaged in business operations in Cuba or Syria.

ARTICLE 35
FOREIGN GIFTS AND CONTRACTS

Pursuant to Section 286.101, Florida Statutes, any bidder or proposer shall disclose in its response to the CITY as well as in any manner required by Section 286.101, Florida Statutes, any current or prior contract with, or grant or gift received from, a Foreign Country of Concern, with a value of \$50,000 or more, received or in force at any time during the previous five years. A "Foreign Country of Concern" shall mean the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such country. Any proposer/bidder who fails to make such disclosure shall be disqualified and also may be liable for a civil violation with a fine of \$5,000 for a first violation or \$10,000 for any subsequent violation.

ARTICLE 36
E-VERIFY AFFIDAVIT

In accordance with Section 448.095, Florida Statutes, the CITY requires all CONTRACTORS doing business with the CITY to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The CITY will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide->

proof-of-my-participationenrollment-in-e-verify. By entering into this Agreement, the CONTRACTOR acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.

ARTICLE 37
SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS

Bidder's social, political, or ideological interests shall not be considered when determining responsiveness and/or responsibility of bid submittal.

END OF INSTRUCTIONS TO BIDDERS

Document 00300

BID

To

THE CITY OF WESTON, FLORIDA

PROJECT: **PAVILION REPLACEMENTS – LIBRARY PARK**

CITY BID NO. 2024-01

COMMENCEMENT: Upon CITY's issuance of "NOTICE TO PROCEED"

FINAL
COMPLETION: One Hundred Eighty (180) Calendar days

BID BOND: \$5,000 or 5% of the Bid amount, whichever is greater

Made as of the ____ day of _____, Two Thousand and _____.

BIDDER: _____

ADDRESS: _____

CONTACT PERSON: _____

PHONE: _____

EMAIL: _____

ORGANIZATION
TYPE:

____ INDIVIDUAL

____ PARTNERSHIP

____ CORPORATION

____ OTHER

ARTICLE 1.0
BID BOND

The Bidder acknowledges the required security of a Bid Bond or Cashier's Check and includes same attached to the document provided herewith.

ARTICLE 2.0
ACCEPTANCE OF BID

This Bid shall be open to acceptance and is irrevocable for ninety (90) Calendar Days from the Bid closing date.

ARTICLE 3.0
EXECUTION OF AGREEMENT BETWEEN CITY AND CONTRACTOR

- 3.1 Upon CITY's acceptance of this Bid within the aforementioned time period, the Bidder shall within fourteen (14) Calendar Days after Notice of Award 1) Execute the Agreement Between CITY and CONTRACTOR, 2) Furnish the required Payment and Performance Bonds 3) Furnish the required Certificates of Insurance and 4) Provide all Internal Revenue Service documents, as required by law.
- 3.2 Should the Bidder fail to execute the Agreement, and/or furnish the required Bonds, and/or furnish the required Certificates of Insurance and any other items requested, within the specified time period, the Bidder's entire security shall be forfeited to the CITY as damages by reason of the Bidder's failure. Such failure may result in CITY's cancellation of the award of the Contract.
- 3.3 In the event the Bid is not accepted within the aforementioned time period, the required security deposit shall be returned to the Bidder upon satisfactory execution of an Agreement with the successful Bidder, or the rejection of ALL Bids, or unless a mutually satisfactory arrangement is made for its retention and validity for an extended period of time.

ARTICLE 4.0
SUBMITTAL OF BID

The Bidder shall submit the Bid on the forms provided, in of the Project Manual.

ARTICLE 5.0
BIDDER'S ACKNOWLEDGMENTS

- 5.1 By submission of this bid, the Bidder acknowledges that he has thoroughly examined all plans, specifications, bid and Contract Documents; understands the insurance requirements and will comply fully with such requirements; thoroughly familiarized himself with all existing site conditions; that no allowances shall be made by the CITY for the Bidder's failure to do same; the Bidder offers to enter into an Agreement with the CITY to furnish all labor, materials, equipment to perform all work included in and in accordance with the plans, specifications, bid and Contract Documents.

- 5.2 The Bidder agrees to be bound by the bid protest procedures, as outlined in Article 29 of the Instructions to Bidders.
- 5.3 The Bidder agrees that this contract is not subject to arbitration. The Bidder is not entitled to Attorney fees should any portion of this contract be subject to litigation.
- 5.4 The Bidder agrees to the change order procedures, as outlined in Article 7 of the General Conditions of the Contract.
- 5.5 If the Bidder makes false statements or provides false information to any portion of the bidding documents, the Bidder acknowledges that he may be disqualified, in accordance with Section 3.4 (D) of the Instructions to Bidders.
- 5.6 The Bidder understands and agrees with the form of the bidding documents as presented, absent any inadvertent drafting or technical errors, and agrees to not attempt to negotiate the terms and conditions of this Project.
- 5.7 The Bidder acknowledges that the terms and conditions of the Contract Documents are not subject to negotiation.

ARTICLE 6.0
REPRESENTATIONS

- 6.1 The CITY is expressly relying upon the Bidder's representations for awarding this Project. Therefore, the Bidder unequivocally represents that the statements and information provided in response to this bid are truthful.
- 6.2 The Bidder and all persons signing on behalf of the bidding person or entity, has the legal authority to bind the Bidder to the terms and conditions of this Project.
- 6.3 There are no legal impediments, conditions or orders, which would preclude the Bidder from satisfactorily performing the CONTRACTOR's duties as outlined in the bidding documents.

[THIS SPACE IS INTENTIONALLY BLANK]

ARTICLE 7.0
BID AMOUNTS

The Bidder offers the following for providing all labor, materials, equipment, temporary fencing etc. to complete the project in accordance with the contract documents (project manual and drawings). The lump sum costs for each individual portion of the Work as set out herein shall be inclusive of all costs for each.

Item	Description of Item	UOM	Qty	Price
1	Pavilion #1 Replacement, including but not limited to foundation design, engineered pavilion structure & all the requirements for the approval of the building and related permits and in accordance with contract documents.	LS	1	
2	Pavilion #2 Replacement, including but not limited to foundation design, engineered pavilion structure & all the requirements for the approval of the building and related permits and in accordance with contract documents.	LS	1	
3	Pavilion #3 Replacement, including but not limited to foundation design, engineered pavilion structure & all the requirements for the approval of the building and related permits and in accordance with contract documents.	LS	1	
4	Permit Fee Allowance	LS	1	\$15,000.00
5	Owner's Contingency	LS	1	\$15,000.00
Grand Total (Items 1 thru 5):				

Grand Total (Written in words)

Name of CONTRACTOR (Please Print)

Signature

Title

Date

ARTICLE 8.0
ACKNOWLEDGMENT OF ADDENDUM

The Bidder hereby acknowledges the receipt of the following addenda issued by the CITY and/or Consultant and incorporated into and made part of the Contract Documents for this Project.

In the event the Bidder fails to include any such addenda below, submission of this form constitutes acknowledgement of receipt of all addenda, whether or not received by the Bidder.

Addendum No. _____

Addendum No. _____

Date _____

Date _____

Addendum No. _____

Addendum No. _____

Date _____

Date _____

Addendum No. _____

Addendum No. _____

Date _____

Date _____

Signature

Title

ARTICLE 9.0
SIGNATURES & SEAL

CONTRACTOR:

Name of CONTRACTOR

Signature

Print Name, Title

_____ day of _____, _____

END OF DOCUMENT 00300

Document 00410

BID SECURITY FORM

All bids shall be accompanied by a Bid Security in the form of a bond issued by the Surety authorized to transact business in the State of Florida, having a resident agent in the State of Florida, in full accordance with the qualifications set forth in the Instructions to Bidders, and on the attached form, or in the alternative, a cashier's check drawn on a bank authorized to do business in Florida, payable to the City of Weston. The amount of the bid security shall be \$5,000.00 or 5% of the Bid amount, whichever is greater.

ATTACH CASHIER'S CHECK HERE

OR

COMPLETE BID BOND ON ATTACHED FORM ONLY

BID BOND

BIDDER

SURETY

Name

Name

Address

Address

FLORIDA RESIDENT AGENT

CITY

Name

City of Weston
17200 Royal Palm Boulevard
Weston, FL 33326
Phone: (954) 385-2000
Fax: (954) 385-2010

Address

Phone

Fax

**PAVILION REPLACEMENTS – LIBRARY PARK
BID NO. 2024-01**

_____ Bid Due Date	_____ Bond Number	_____ Bond Date	\$ _____ Penal Sum
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IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the terms included in this section, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

SURETY (Attach Power of Attorney)

Corporate Name and Seal

Corporate Name and Seal

Signature

Signature

Name and Title

Name and Title

Attest

Attest

Attest

Attest

Foregoing addresses shall be used for giving of required notices. Any singular reference to Bidder, Surety, Florida Resident Agent, City or other party shall be considered a plural where applicable.

1. Bidder and Surety, jointly and severally, bind themselves, and their heirs, executors, administrators, successors and assigns to pay to City upon default of Bidder any difference between the total amount of Bidder's bid and the total amount of the bid of the next lowest, responsible and responsive bidder as determined by City for the Work required by the Contract Documents, provided that:
 - 1.1 If there is no such next lowest, responsible and responsive bidder, and City does not abandon the Project, then Bidder and Surety shall pay to City the penal sum set forth on the face of this Bond, and
 - 1.2 In no event shall Bidder's and Surety's obligation hereunder exceed the penal sum set forth on the face of this Bond.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the bidding documents (or any extension thereof agreed to in writing by City) the executed Agreement required by the bidding documents, the Insurance Agent Statement and any performance and payment bonds required by the bidding documents and Contract Documents.
3. This obligation shall be null and void if:
 - 3.1 City accepts Bidder's bid and Bidder delivers within the time required by the bidding documents (or any extension thereof agreed to in writing by City) the executed Agreement required by the bidding documents, the Insurance Agent Statement and any performance and payment bonds required by the bidding documents and Contract Documents, or
 - 3.2 All bids are rejected by City, or
 - 3.3 City fails to issue a notice of award to Bidder within the time specified in the bidding documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to be Surety when required by paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from City, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue notice of award agreed to in writing by City and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety and in no case later than one year after bid due date.

7. Any suit or action under this Bond shall be commenced only in a Florida court of competent jurisdiction. Any award granted shall not be subject to prejudgment interest.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "bid" as used herein includes a bid, offer or proposal as applicable.

END OF BID BOND

Document 00420

CONTRACTOR'S QUALIFICATION STATEMENT

THE UNDERSIGNED CERTIFIES UNDER OATH THE TRUTH AND CORRECTNESS OF ALL STATEMENTS AND OF ALL ANSWERS TO THE QUESTIONS MADE HEREINAFTER.

Submitted to: City of Weston, Florida
17200 Royal Palm Boulevard
Weston, Florida 33326

PROJECT TITLE: PAVILION REPLACEMENTS – LIBRARY PARK

CITY BID NO. 2024-01

TYPE OF CONTRACTOR
General Building
Electrical
Paving & Drainage
Other

ORGANIZATION: _____

ADDRESS: _____

PHONE: _____ FAX: _____

EMAIL: _____

PRINCIPAL OFFICE: _____

- 1. Years your organization has been in business as a contractor?
2. Years your organization has been in business under its present business name?
3. If a corporation, answer the following:
(A) Date of incorporation:
(B) State of incorporation:
(C) President's name:
(D) Vice President's name:
(E) Secretary's name:

(F) Treasurer's name: _____

(G) All Directors' names: _____

(H) All Shareholders' names: _____

4. If an individual or partnership, answer the following:

(A) Date of organization: _____

(B) Name and address of all partners (state whether general or limited partnership): _____

5. If other than a corporation or partnership, describe organization and name of principals:

6. List licenses, certifications and county/municipal Business Tax Receipt (BTR) in which your organization is legally qualified to do business. Indicate registration or license numbers, if applicable. List type of Broward County Certificate of Competency and number where applicable. **Attach copies of each.**

Type of License: _____ # _____ Expires: _____

Type of License: _____ # _____ Expires: _____

Broward County CC: _____ # _____ Expires: _____

BTR Issued by (Agency): _____ # _____ Expires: _____

7. We normally perform the following work with our own forces: _____

8. Have you ever failed to complete any work awarded to you? Yes ___ No ___
If so, note when, where and why. _____

9. Within the last five years, has any officer or partner of your organization ever been an officer or partner of another organization that failed to complete a contract?
Yes _____ No _____ If yes, attach a separate sheet of explanation.

10. Within the last five years, have you ever had a performance, payment or bid bond called?

Yes _____ No _____ If yes, attach a separate sheet of explanation.

11. **On a supplemental sheet below**, list at least five (5) similar projects your organization has completed in the past five (5) years, giving the name of the project, architect/engineer, phone, email, contract amount and date of completion. **Please note: All contact information shall be current.**
12. **On a supplemental sheet below**, list the major projects your organization has **in progress**. For each project provide the name of project, owner or government agency, project manager/owners representative, phone, email, contract amount, percentage of project completed and the scheduled completion date. **Please note: All contact information shall be current.**
13. **On a supplemental sheet**, list the construction experience of the key individuals of your organization, who will be working on this project.
14. **On a supplemental sheet**, list the section of work, name of subcontractor and construction experience of the key individuals of your subcontractors who will be working on this project.
15. **On a supplemental sheet**, list the substitution labor/equipment/materials specified, if any, which are proposed on this project.
16. Have you, any officer or partner of your organization, or the organization been involved in any litigation or arbitration against the City?
Yes _____ No _____ If yes, attach a separate sheet of explanation.
17. Within the last five years, have you, any officer or partner of your organization, or the organization been involved in any litigation or arbitration against any other Florida public entity?
Yes _____ No _____ If yes, attach a separate sheet of explanation.
18. Within the last five years, have you, any officer or partner of your organization, or the organization or parent company or its subsidiaries been involved in any litigation or arbitration against any private entity for an amount greater than \$100,000?
Yes _____ No _____ If yes, attach a separate sheet of explanation.
19. Has your organization or any of its partners, officers, or key personnel, or its subsidiaries or parent company been charged or indicted for any criminal activity within the last five years?
Yes _____ No _____ If yes, attach a separate sheet of explanation.
20. Has your organization or any of its partners, officers, or key personnel, or its subsidiaries or parent company been convicted and/or fined for any criminal activity within the last five years?
Yes _____ No _____ If yes, attach a separate sheet of explanation.

21. Within the last five years, have you, any officer or partner of your organization, or the organization been investigated by any local, state, or federal law enforcement agency, criminal justice agency or inspector general office?
Yes _____ No _____ If yes, attach a separate sheet of explanation.
22. Within the last five years, have you, any officer or partner of your organization, or the organization communicated with any local, state, or federal law enforcement agency, criminal justice agency or inspector general office relating to goods or services provided or performed for any governmental entity?
Yes _____ No _____ If yes, attach a separate sheet of explanation.
23. Within the last five years, have there been any reports or audits relating to you, any officer or partner of your organization, or the organization issued by any local, state, or federal law enforcement agency, criminal justice agency or inspector general office.
Yes _____ No _____ If yes, attach a separate sheet of explanation.
24. Within the last five years, have you, any officer or partner of your organization, or the organization failed to disclose or made misrepresentations to any governmental entity regarding conflicts of interest or potential or apparent conflicts of interest.
Yes _____ No _____ If yes, attach a separate sheet of explanation.

Signature

Title

Name

Date

ITEM 1 SUPPLEMENT

ATTACH VALID COPIES OF:

CONTRACTOR LICENSES

CERTIFICATES OF COMPETENCY

(If Applicable)

BUSINESS TAX RECEIPT

END OF ITEM 1 SUPPLEMENT

ITEM 2 SUPPLEMENT
SIMILAR PROJECTS COMPLETED WITHIN THE LAST FIVE YEARS
 BIDDERS MUST COMPLETE THIS INFORMATION IN THE FORMAT BELOW)
 Bidders may choose to provide additional project information **BUT NOT IN LIEU OF THIS FORM.**

1	Name of Project		
Description/Scope of Work:			
Owner of Project:			Location (City/State)
Owner's Contact Person	Phone:	Email:	
Project Value/Construction Cost		Project Completion Date (month/year)	

2	Name of Project		
Description/Scope of Work:			
Owner of Project:			Location (City/State)
Owner's Contact Person	Phone:	Email:	
Project Value/Construction Cost		Project Completion Date (month/year)	

3	Name of Project		
Description/Scope of Work:			
Owner of Project:			Location (City/State)
Owner's Contact Person	Phone:	Email:	
Project Value/Construction Cost		Project Completion Date (month/year)	

END OF ITEM 2 SUPPLEMENT

**ITEM 3 SUPPLEMENT
SUBCONTRACTORS**

The following work will be performed (or provided) by Subcontractors and coordinated by the CONTRACTOR.

Subcontractor Name	City/State	
Name Key Individual	Title	
Type/Section of Work	Years Experience	

Subcontractor Name	City/State	
Name Key Individual	Title	
Type/Section of Work	Years Experience	

Subcontractor Name	City/State	
Name Key Individual	Title	
Type/Section of Work	Years Experience	

Subcontractor Name	City/State	
Name Key Individual	Title	
Type/Section of Work	Years Experience	

END OF ITEM 3 SUPPLEMENT

**ITEM 4 SUPPLEMENT
SUBSTITUTIONS**

The following substitution to the labor/materials/equipment specified, if any, are proposed by the Contractor.

SPECIFICATION

SUBSTITUTION

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
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_____	_____
_____	_____
_____	_____
_____	_____

END OF ITEM 4 SUPPLEMENT

Document 00430

ACKNOWLEDGMENT OF INSPECTION

The Contractor hereby acknowledges that the site(s) and/or condition(s) specified herein have been inspected prior to submission of this Bid.

Deviation(s) from existing conditions, plans, or specifications evidenced by the Contractor shall be listed below. The Contractor shall not be relieved from his obligations to comply with all plans and specifications by his failure to note any deviations which may exist.

DEVIATIONS: YES _____ NO _____ (IF YES, DESCRIBE DEVIATIONS BELOW)

Inspection Date _____

Inspected By _____

Title _____

Signature _____

END OF ACKNOWLEDGMENT OF INSPECTION

Document 00440

**CITY OF WESTON, FLORIDA
Sworn Statement Under §287.133(3)(a), Florida Statutes
Public Entity Crimes**

(This form must be signed in the presence of a notary public or other officer authorized to administer oaths.)

1. This sworn statement is submitted with Bid, Proposal or Contract No. _____

2. This sworn statement is submitted by: _____
(name of entity submitting sworn statement)

whose business address is: _____

Federal Identification Number
(FEIN) is: _____
(if applicable)

Social Security Number: _____
(if the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement)

3. My name is: _____
(print name of individual signing this document)

and my relationship to the entity is: _____

4. I understand that a "public entity crime" as defined in §287.133(1)(g), Florida Statutes means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United states, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

5. I understand that a "convicted" or "conviction" as defined in §287.133(1)(b), Florida Statutes, means a finding of guilt of a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

6. I understand that an "affiliate" as defined in §287.133(1)(a), Florida Statutes means:

- (a) A predecessor or successor of a person or a corporation convicted of a public entity crime; or
 - (b) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, share holders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima-facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
7. I understand that a "person" as defined in §287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which binds or applies to bids on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
8. Based on the information and belief, the statement that I have marked below is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies)
- a. _____ Neither the entity submitting the sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members or agents who are active in management of the entity nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.
 - b. _____ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members or agents who are active in management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989 and (Please indicate which additional statement applies)
 - 1. _____ There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order)
 - 2. _____ The person or affiliate was placed on the convicted list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order)

3. _____ The person or affiliate has not been placed on the convicted vendor list.
(Please describe any action taken by or pending with the Department of General Services)

Signature

Date

END OF PUBLIC ENTITY CRIMES STATEMENT

Document 00450

NON-COLLUSION AFFIDAVIT

The undersigned Bidder has not divulged, discussed or compared his/her Bid Proposal with any other Bidders and has not colluded with any other Bidder or parties to this Bid whatsoever.

Signature

Name

Title

Date

END OF NON-COLLUSION AFFIDAVIT

Document 00460

ACKNOWLEDGMENT OF CONFORMANCE

WITH

FLORIDA TRENCH SAFETY ACT

To the City of Weston, Florida:

_____, Contractor, hereby acknowledges and agrees that as Contractor for the City of Weston, Florida, within the limits of the City of Weston, Florida, that he shall have the sole responsibility for compliance with all requirements of the Florida Trench Safety Act, § 553.60 *et seq.* Florida Statutes, and herein agrees to indemnify and hold harmless the City of Weston, Florida, its officials, employees, consultants, and its agents against any and all legal liability or loss the City of Weston, Florida may incur due to the Contractor's failure to comply with such act. The cost of compliance with all such requirements have been included in the Bid.

Contractor:

Name of Contractor

Signature

Print Name, Title

_____ day of _____, _____

END OF TRENCH SAFETY ACKNOWLEDGMENT

**Document 00470
INDEPENDENCE AFFIDAVIT**

The undersigned individual, being duly sworn, deposes and says that:

I am _____ of _____, the Contractor that has submitted the attached Proposal;

I hereby certify to the best of my knowledge that neither I nor any of those persons residing in my household have or have had during the past five years, any relationships (professional, financial, familial or otherwise) with the CITY (or any of its districts), its elected or appointed officials, its employees or agents, or any member or alternate member of the Selection Committee.

A "relationship" for the purpose of this affidavit shall include but not be limited to employer/employee, consultant, contractor, sub-contractor, associate, officer, partnership, joint venture, ownership greater than one percent, landlord/tenant, or creditor/debtor, gift donor/recipient (in excess of \$100.00), past or on-going personal relationships, or joint involvement with charitable/voluntary activities. **Relationship includes having a prior or current contract with the City.**

Except as set forth below, I hereby certify to the best of my knowledge that neither I nor any of those persons residing in my household have received any promise of compensation, remuneration, gift, discount, or other gratuity in exchange for my proposal.

I understand and agree that I shall give the City written notice of any other relationships (as defined above) that I enter into with the City (or any of its districts), its elected or appointed officials, its employees or agents, or any member or alternate member of the Selection Committee during the period of this Agreement.

I set forth below any exceptions to the aforementioned (if none, write "None"):

[THIS SPACE INTENTIONALLY LEFT BLANK]

**Document 00470
INDEPENDENCE AFFIDAVIT
(CONTINUED)**

Signature (Blue ink only)

Print Name

Title

Date

END OF INDEPENDENCE AFFIDAVIT

Document 00480

DRUG-FREE WORKPLACE

The undersigned Contractor in accordance with Chapter 287.087, Florida Statutes, hereby certifies that _____ does:
(Name of Contractor)

1. Publish a statement notifying employees that the unlawful manufacturing, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the work place, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the contractual services described in the Agreement document a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employee that, as a condition of working on the contractual services described in the Bid documents, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

**Document 00480
DRUG-FREE WORKPLACE
(CONTINUED)**

Signature (Blue ink only)

Print Name

Title

Date

END OF DRUG-FREE WORKPLACE

Document 00490

SCRUTINIZED COMPANIES

The undersigned Contractor in accordance with Section 287.135, Florida Statutes, hereby certifies that:

1. Contractor is not participating in a boycott of Israel;
2. Contractor is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List;
3. Contractor does not have business operations in Cuba or Syria.

Signature (Blue ink only)

Print Name

Title

Date

END OF SCRUTINIZED COMPANIES

DOCUMENT 00495
E-VERIFY AFFIDAVIT

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

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

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

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

Signature (Blue Ink Only)

Date

Print Name

Title

Document 00500

**AGREEMENT BETWEEN
CITY OF WESTON, FLORIDA**

AND

AGREEMENT

Made as of the _____ day of _____ in the year of _____

Between the CITY: City of Weston, a Florida municipal corporation ("CITY")
17200 Royal Palm Boulevard
Weston, Florida 33326

and the **CONTRACTOR:** _____
(Name and address) _____

The Project is: PAVILION REPLACEMENTS – LIBRARY PARK, BID No. 2024-01
(Name and location) 4255 Bonaventure Blvd., Weston, FL 33332

The CITY and CONTRACTOR agree as follows:

ARTICLE 1.0
THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. **The Contract Documents shall not be changed and are not subject to negotiation.**

ARTICLE 2.0
THE WORK OF THIS CONTRACT

The CONTRACTOR shall execute the entire Work described in the Contract Documents except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

ARTICLE 3.0
DATE OF COMMENCEMENT AND SUBSTANTIAL AND FINAL COMPLETION

- 3.1 The CONTRACTOR shall be instructed to commence the Work by written instruction in the form of Notices to Proceed issued by the CITY. The Notice to Proceed will not be issued until CONTRACTOR's submission to CITY of all required documents and after execution of the Contract by both parties.
- 3.2 Notice to Proceed.
- A. Preconstruction Work shall be commenced within ten (10) calendar days after the issuance of the Notice to Proceed. CONTRACTOR shall have ten (10) days after receipt of signed and sealed Contract drawings to apply for all construction permits to the applicable permitting authority. Failure to complete the tasks authorized by the Notice to Proceed within thirty (30) days of date set forth in the Notice to Proceed as issued by the CITY shall be grounds to terminate the Contract for cause.
- B. After issuance of the Notice to Proceed, CONTRACTOR shall submit to the CITY all of the following items for CITY's approval:
1. A project schedule in compliance with the requirements of Division 1 or elsewhere in the Contract Documents. Additionally, at the request of the CITY, CONTRACTOR shall also provide for review and approval a detailed, precedence-style, resource loaded, cost loaded, critical path method (CPM) type schedule, in a format satisfactory to the CITY which shall also: (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction, Substantial Completion, occupancy and Final Completion; and (3) set forth milestone dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents. CONTRACTOR shall provide CITY with the schedule in hard copies and in electronic files, such that the CITY may see CONTRACTOR's logic.
 2. A preliminary schedule of planned Shop Drawing and submittal submissions.
 3. A preliminary schedule of values in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.
 4. Utility coordination schedule: CONTRACTOR shall be responsible to meet and coordinate with all utility owners as it relates to the Work and secure from them a schedule of utility relocation, as applicable. CITY shall not be responsible for the nonperformance by the utility owners.
 5. All permits required by authorities having jurisdiction for all portions of the Work, unless otherwise provided by the Contract Documents.
- C. Preconstruction Meeting: After receipt of all items identified above, a Preconstruction Meeting will be held to discuss procedures for conducting the Work, including but

not limited to designating individuals to receive communications; for required submissions, inspections and approvals; for processing Applications for Payment; and to establish a working understanding among the parties as to the Work.

- 3.3 The Date of Commencement is the date from which the Contract time is measured and shall be the date set forth in the Notice To Proceed as issued by the CITY. Should the CONTRACTOR incur costs prior to the issuance of the Notice to Proceed, any such costs shall be incurred at the CONTRACTOR's risk, and the CITY shall not reimburse the CONTRACTOR for any such costs under any circumstances. Notwithstanding the foregoing, CITY may reimburse CONTRACTOR for actual costs incurred relating to performance and payment bonds and insurance, with submittal of invoices, in the event that CITY terminates this Contract for convenience, as provided in the General Conditions. If CONTRACTOR fails to commence the Work within Ten (10) days of the date set forth in the Notice to Proceed, CITY may terminate the Contract immediately, without providing an opportunity to cure.
- 3.4 The CONTRACTOR shall achieve Substantial Completion not later than One Hundred Fifty (150) calendar days commencing with the date set forth in the Notice to Proceed as issued by the CITY, subject to adjustments of this Contract Time as provided in the Contract Documents. The CONTRACTOR shall achieve Final Completion of the entire Work not later than One Hundred Eighty (180) calendar days commencing with the date set forth in the Notice To Proceed as issued by the CITY, subject to adjustments of this Contract Time as provided in the Contract Documents.
- 3.5 The Parties agree that time is of the essence in the performance of this Agreement. CONTRACTOR shall achieve Substantial Completion as defined in the Contract Documents, subject to any authorized extensions of time as indicated by a properly executed written Change Order, in strict accordance with the time limits set forth in the Contract Documents. In the event the Work is not Substantially Completed within the time limits set forth in the Contract Documents and has not been extended by a properly executed written Change Order, the CITY shall be entitled to collect liquidated damages from CONTRACTOR for each calendar day CONTRACTOR is late in achieving Substantial Completion.

CONTRACTOR and CITY agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the impossibility of determining these damages at the time of entering into this Agreement, the sum of Eight Hundred Dollars (\$800.00) for each calendar day shall be assessed as liquidated damages for each calendar day that CONTRACTOR is late in achieving Substantial Completion of the Work.

CONTRACTOR shall achieve Final Completion as defined in the Contract Documents, subject to any authorized extensions of time as indicated by a properly executed written Change Order, in strict accordance with the time limits set forth in the Contract Documents. In the event the Work does not reach Final Completion within the time limits set forth in the Contract Documents and it has not been extended by a properly executed written Change Order, the CITY shall be entitled to collect liquidated damages from CONTRACTOR for each calendar day after Substantial Completion where CONTRACTOR is late in achieving Final Completion. CONTRACTOR and CITY agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the impossibility of determining these damages at the time of entering into this Agreement, the sum of One Hundred and Sixty Dollars (\$160.00) for each calendar day shall be assessed as liquidated

damages for each calendar day after Substantial Completion, where CONTRACTOR is late in achieving Final Completion of the Work.

It is hereby agreed that the above per diem assessments are reasonable, are not penalties and are not excessive in light of the circumstances known to the parties at the time this Agreement is executed.

This provision shall not affect the CITY's right to terminate this Agreement as provided in the Contract Document nor shall it limit any of the other remedies as provided in the Contract Documents. The CITY's exercise of its right to terminate this Agreement shall not release the CONTRACTOR from its obligation to pay liquidated damages in the amounts set forth herein. Such assessments shall be immediately due and payable to the CITY or, at the CITY's option may be deducted from current or future payments that are or may be due and owing to CONTRACTOR.

- 3.6 The CITY and the CONTRACTOR recognize and agree that the precise amount of the CONTRACTOR's Indirect Costs for delay in the performance and completion of the Work is impossible to determine as of the date of execution of the Contract, and that proof of the precise amount will be difficult. Therefore, Liquidated Indirect Costs recoverable by the CONTRACTOR shall be assessed on a daily basis for each Day the Contract Time is delayed due to compensable delay. These Liquidated Indirect Costs, the sum of One Hundred and Seventy-Five Dollars (\$175.00) for each calendar day, shall be paid to the CONTRACTOR in full satisfaction of all costs and damages caused by compensable excusable delays, except for Direct Costs. There shall be no Liquidated Indirect Costs payable for time directly related to Extra Work for which a Change Order has been issued.
- 3.7 CONTRACTOR shall submit to the CITY all required paperwork within thirty (30) days after Final Completion. Should CONTRACTOR fail to complete and submit all required paperwork including the Project Closeout Forms within thirty (30) days after Final Completion, CONTRACTOR shall pay CITY, One Hundred Dollars (\$100.00) per calendar day until compliance or CITY shall deduct such monies from the monies owed to CONTRACTOR. Should CONTRACTOR fail to comply within sixty (60) days after Final Completion the CONTRACTOR waives its right to the retainage and any other monies owed from the CITY to the CONTRACTOR pursuant to the Agreement.

ARTICLE 4.0 **CONTRACT SUM**

- 4.1 The CITY shall pay the CONTRACTOR, for the CONTRACTOR's performance of the work the Contract Sum of (_____), subject to additions and deductions as provided in the Contract Documents.
- 4.2 The Contract Sum is based upon the cost agreed upon by the parties, for the satisfactory performance of the work in accordance with the Contract Documents.
- 4.3 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 at the CITY's option:

- (A) 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 without additional fees.
- (B) By mutual acceptance of a lump sum price.

ARTICLE 5.0
PROGRESS PAYMENTS

- 5.1 Based upon Applications for Payment submitted to the Consultant by the CONTRACTOR and Certifications of Payment issued by the Consultant, the CITY shall make progress payments on account of the Contract Sum to the CONTRACTOR as provided below, elsewhere in the Contract Documents and in accordance with Part VII of Chapter 218, Florida Statutes, as may be amended from time to time, entitled the "Local Government Prompt Payment Act."
- 5.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:
- 5.3 Each Application for Payment shall be based upon the Schedule of Values submitted by the CONTRACTOR in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the work and be prepared in such form and supported by such data to substantiate its accuracy as the Consultant may require. This schedule, unless objected to by the Consultant, shall be used as a basis for reviewing the CONTRACTOR's Applications for Payment.
- 5.4 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.
- 5.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 - (A) Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of five percent (5%) until 50-percent completion and after 50-percent completion, reduce to two and a half percent (2.5%) the amount of retainage withheld from each subsequent progress payment.
 - (B) Add that portion of the Contract Sum properly allocable to materials and equipment delivered and installed, less the applicable retainage. No sums shall be due for materials stored on or off site not yet installed.
 - (C) Subtract the aggregate of previous payments made by the CITY; and
 - (C) Subtract amounts, if any, for which the Consultant has withheld or nullified.

- 5.6 Each Application for Payment after the first Application shall be accompanied by a Certification of Payment form, provided by the CITY, from the CONTRACTOR and each Supplier and Subcontractor, in amounts equal to those stated in the PRIOR Application for the CONTRACTOR and each Subcontractor and each Subcontractor, Material/Labor Supplier so due payment. The Application for Payment for Retainage shall be accompanied by a final Certification of Payment and Release of Claim form from the CONTRACTOR, each Supplier and Subcontractor in amounts equal to those stated in the Schedule of Values.

ARTICLE 6.0
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the CITY to the CONTRACTOR when (1) the Contract has been fully performed by the CONTRACTOR except for the CONTRACTOR's responsibility to correct nonconforming Work, if any, which obligation survives final payment and continues thereafter; and (2) a final Certification of Payment has been issued by the Consultant; such final payment shall be made by the CITY not more than 30 days after the issuance of the Consultant's final Certification of Payment, (3) final Certification of Payment have been furnished from the CONTRACTOR, Suppliers and Subcontractors; and (4) a Consent of Surety, if any, for final payment.

ARTICLE 7.0
MISCELLANEOUS PROVISIONS

- 7.1 Where reference is made in this Agreement to a provision of the General Conditions or other Contract Documents, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.
- 7.2 CITY and CONTRACTOR agree that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

ARTICLE 8.0
TERMINATION OR SUSPENSION

- 8.1 The Contract may be terminated by the CITY or the CONTRACTOR as provided in the General Conditions.
- 8.2 The Work may be suspended by the CITY as provided in the General Conditions.
- 8.3 This Agreement may be terminated by the CITY if the CONTRACTOR is found to have submitted a false certification, Document 00490, has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

ARTICLE 9.0
ENUMERATION OF CONTRACT DOCUMENTS

9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

Volume I

00001	TITLE PAGE
00002	PROJECT DATA
00003	TABLE OF CONTENTS
00004	LIST OF DRAWINGS
00010	NOTICE TO BIDDERS
00100	INSTRUCTIONS TO BIDDERS
00300	BID FORM
00410	BID SECURITY FORM
00420	CONTRACTOR'S QUALIFICATION STATEMENT
00440	PUBLIC ENTITY CRIMES STATEMENT
00450	NON-COLLUSION AFFIDAVIT
00460	CONFORMANCE WITH FLORIDA TRENCH SAFETY ACT
00470	INDEPENDENCE AFFIDAVIT
00480	DRUG-FREE WORKPLACE
00490	SCRUTINIZED COMPANIES
00495	E-VERIFY AFFIDAVIT
00500	AGREEMENT BETWEEN CITY AND CONTRACTOR
00510	ACKNOWLEDGMENT IF INDIVIDUAL
00520	ACKNOWLEDGMENT IF PARTNERSHIP
00530	ACKNOWLEDGMENT IF CORPORATION
00600	PERFORMANCE BOND
00610	PAYMENT BOND
00620	CERTIFICATE(S) OF INSURANCE
00630	CONFORMANCE WITH O.S.H.A. STANDARDS
00640	HAZCOM TRAINING/INFORMATION
00645	CERTIFICATION OF ACCURACY
00700	GENERAL CONDITIONS
00800	SUPPLEMENTAL CONDITIONS – SPECIFICATION SECTION 075200
00900	ADDENDUM
00910	WARRANTY BOND
00920	CERTIFICATION OF PAYMENT AND PAY ESTIMATE APPROVAL FORM
00930	CERTIFICATION OF PAYMENT AND PARTIAL RELEASE OF CLAIM
00940	CERTIFICATION OF PAYMENT AND FINAL RELEASE OF CLAIM
00950	CONSENT OF SURETY
00960	PROJECT CLOSEOUT
00970	CLOSEOUT PACKAGE CHECKLIST

- 9.1.1 The Agreement is this executed Agreement between CITY and CONTRACTOR.
- 9.1.2 The General Conditions are the General Conditions of the Contract for Construction.
- 9.1.3 The Supplementary and other conditions of the Contract are those contained in the Project Manual.
- 9.1.4 The Specifications are those contained in the Project Manual listed in the Table of Contents.
- 9.1.5 The Drawings and Specifications are listed in 00004.
- 9.1.6 The Addenda, if any, are in Section 900 and summarized below:

Number

Date

ADDENDUM

- 9.1.7 The Certification of Payment forms and Project Closeout Forms are those contained in the Project Manual.

[THIS SPACE INTENTIONALLY LEFT BLANK]

AGREEMENT
BETWEEN THE
CITY OF WESTON, FLORIDA
AND

Project Name: **PAVILION REPLACEMENTS – LIBRARY PARK
BID NO. 2024-01**

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: City of Weston through its City Commission, signing by and through its Mayor, authorized to execute same by Commission action on the _____ of _____, ____; and _____ authorized to execute same.

CITY OF WESTON, through its City Commission

ATTEST:

Patricia A. Bates, MMC, City Clerk

By: _____
Margaret Brown, Mayor

____ day of _____, ____

By: _____
Donald P. Decker, City Manager

____ day of _____, ____

Approved as to form and legality
for the use of and reliance by the
City of Weston only:

By: _____
Jamie Alan Cole, City Attorney

____ day of _____, ____

(CITY SEAL)

AGREEMENT

BETWEEN

THE CITY OF WESTON, FLORIDA

AND

Name of CONTRACTOR

Signature

Print Name, Title

_____ day of _____, _____

END OF AGREEMENT

Document 00510

ACKNOWLEDGMENT OF CONTRACTOR, IF AN INDIVIDUAL

State of _____, County of _____

On this _____ day of _____, _____, before me personally came and appeared _____ to me known and known to me to be the person described in and who executed the foregoing Agreement and acknowledged that (s)he executed same and that (s)he has the authority to do so.

END OF ACKNOWLEDGMENT – INDIVIDUAL

Document 00520

ACKNOWLEDGMENT OF CONTRACTOR, IF A PARTNERSHIP

State of _____, County of _____

On this _____ day of _____, _____, before me personally came and appeared _____ to me known and known to me to be one of the members of the partnership of _____ described in and who executed the foregoing Agreement and acknowledged that (s)he executed same on behalf of said partnership and that the same is the act and deed of the said partnership and that (s)he has the authority to do so.

END OF ACKNOWLEDGMENT – PARTNERSHIP

Document 00530

ACKNOWLEDGMENT OF CONTRACTOR, IF A CORPORATION

State of _____, County of _____

On this _____ day of _____, _____, before me personally came and appeared _____ to me known and who, being duly sworn, did depose and say that (s)he is the _____ of _____, the corporation described in and which executed the foregoing Agreement; that (s)he knows the seal of the said corporation; that one of the impressions affixed to the said Agreement is an impression of the said seal; that (s)he is the proper official of the said corporation designated to execute such Agreement; that (s)he has the authority to do so; that (s)he has executed same for and on behalf of the said corporation; and that his/her act is the act and deed of the said corporation.

END OF ACKNOWLEDGMENT – CORPORATION

Document 00600

PERFORMANCE BOND

Any singular reference to Contractor, Surety, City or other party shall be considered plural where applicable.

CONTRACTOR (name and address):

SURETY (name and principal place of business):

CITY:

City of Weston
17200 Royal Palm Boulevard
Weston, Florida 33326

CONSTRUCTION CONTRACT

Date:

Amount:

Description (name and location):

Pavilion Replacements – Library Park,
4255 Bonaventure Blvd., Weston, FL 33332
City Bid No. 2024-01

BOND

Date (not earlier than
Construction Contract
Date):

Amount:

Modifications to this Bond: None

See Page(s)

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

Signature

Signature

Name

Name

Title

Title

(Any additional signatures please include at the end of page 5)

FLORIDA RESIDENT AGENT

Address

Phone

Fax

1. The Contractor and the Surety, jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns to the City for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences.
3. If there is no City Default, the Surety's obligation under this Bond shall arise after:
 - A. The City has notified the Contractor and the Surety at its address described in paragraph 10 below that the City is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen (15) days after receipt of such notice to discuss methods of performing the Construction Contract. If the City, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the City's right, if any, subsequently to declare a Contractor Default; and

- B. The City has declared a Contractor Default and formally terminated the Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than twenty (20) days after the Contractor and the Surety have received; and
 - C. The City has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a Contractor selected to perform the Construction Contract in accordance with the terms of the Contract with the City.
4. When the City has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
- A. Arrange for the Contractor, with consent of the City, to perform and complete the Construction Contract; or
 - B. Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
 - C. Obtain bids or negotiated proposals from qualified Contractors acceptable to the City for a Contract for performance and completion of the Construction Contract, arrange for a Contract to be prepared for execution by the City and the Contractor selected with the City's concurrence, to be secured with performance and payment bonds executed by a qualified Surety equivalent to the bonds issued on the Construction Contract, and pay to the City the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the City resulting from the Contractor's default; or
 - D. Waive its right to perform and complete, arrange for completion, or obtain a new Contractor acceptable to the City and with reasonable promptness under the circumstances:
 - 1. After investigation, determine the amount for which it may be liable to the City and, as soon as practicable after the amount is determined, tender payment therefore to the City; or
 - 2. Deny liability in whole or in part and notify the City citing reasons therefore.
5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the City to the Surety demanding that the Surety perform its obligations under this Bond, and the City shall be entitled to enforce any remedy available to the City. If the Surety proceeds, on in part, without further notice, the City shall be entitled to enforce any remedy available to the City.

6. After the City has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act, then the responsibilities of the Surety to the City shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the City to the Surety shall not be greater than those of the City under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the City of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
 - A. The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - B. Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and
 - C. Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the City or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the City or its heirs, executors, administrators or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the City or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common-law bond.

12. **DEFINITIONS**

- A. **Balance of the Contract Price:** The total amount payable by the City to the Contractor under the Construction Contract after all proper adjustments have been made including allowance to the Contractor of any amounts received or to be received by the City in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
- B. **Construction Contract:** The agreement between the City and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
- C. **Contractor Default:** Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
- D. **City Default:** Failure of the City, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company: (Corporate Seal)

SURETY
Company: (Corporate Seal)

Signature

Signature

Name

Name

Title

Title

END OF PERFORMANCE BOND

Document 00610

PAYMENT BOND

Any singular reference to Contractor, Surety, City or other party shall be considered plural where applicable.

CONTRACTOR (name and address):

SURETY (name and principal place of business):

CITY:

City of Weston
17200 Royal Palm Boulevard
Weston, Florida 33326

CONSTRUCTION CONTRACT

Date: _____

Amount: _____

Description (name and location): Pavilion Replacements – Library Park
1101 Park Rd, Weston, FL 33327
City Bid No. 2024-01

BOND

Date (not earlier than Construction Contract Date): _____

Amount: _____

Modifications to this Bond: None _____ See Page(s) _____

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

Signature

Signature

Name

Name

Title

Title

(Any additional signatures please include at the end of page 5)

FLORIDA RESIDENT AGENT

Address

Phone

Fax

1. The Contractor and the Surety, jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns to the City to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the City, this obligation shall be null and void if the Contractor:
 - A. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - B. Defends, indemnifies and holds harmless the City, its Commission, employees, agents and Consultant from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Work, pursuant to the Construction Contract, provided the City has promptly notified the Contractor and the Surety (at the address described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no City Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:
 - A. Claimants who are employed by or have a direct Contract with the Contractor have given notice to the Surety (at the address described in paragraph 12) and sent a copy, of notice thereof, to the City, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - B. Claimants who do not have a direct Contract with the Contractor:
 1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the City, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the City, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by paragraph 4 is given by the City to the Contractor or to the Surety that is sufficient compliance.
6. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and, at the Surety's expense, take the following actions:
 - A. Send an answer to the Claimant, with a copy to the City, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - B. Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the City accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the City's priority to use the funds for the completion of the work.

9. The Surety shall not be liable to the City, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The City shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by subparagraph 4.1 or Clause 4.2.3 or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the City or the Contractor shall be mailed or delivered to the address show on the signature page. Actual receipt of notice by Surety, the City or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. **DEFINITIONS**
 - A. **Claimant:** An individual or entity having a direct Contract with the Contractor or with a Subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
 - B. **Construction Contract:** The agreement between the City and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

- (C) **City Default:** Failure of the City, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

Signature

Signature

Name

Name

Title

Title

END OF PAYMENT BOND

Document 00620

CERTIFICATE(S) OF INSURANCE

ATTACH

CERTIFICATE(S) OF INSURANCE

TO THIS PAGE

UPON EXECUTION OF

AGREEMENT BETWEEN CITY & CONTRACTOR

Document 00630

ACKNOWLEDGMENT OF CONFORMANCE

WITH O.S.H.A. STANDARDS

To the City of Weston, Florida:

_____, hereby acknowledges and agrees that as Contractor for the City of Weston, Florida, within the limits of the City of Weston, Florida, that we have the sole responsibility for compliance with all requirements of the Federal Occupational Safety and Health Act of 1970, and all State and local safety and health regulations, and agrees to defend, indemnify and hold harmless the City of Weston, Florida, its officials, employees, service providers, and its agents against any and all legal liability or loss the City of Weston, Florida may incur due to the Contractor's failure to comply with such act.

Contractor:

Witness

Name of Contractor

Print Name

Signature

Witness

Print Name, Title

Print Name

_____ day of _____, _____

(CORPORATE SEAL)

END OF O.S.H.A. STANDARDS

Document 00640

HAZCOM TRAINING/INFORMATION

ARTICLE 1.0
TRAINING

- 1.1 This is to verify that I have been given training information as required by OSHA's Hazard Communication Standard. Training has included:
- A. Potential chemical and physical hazards for the areas in which contract operations are being conducted.
 - B. The location and availability of Material Safety Data Sheets.
 - C. Detection of the presence of hazardous chemicals.
 - D. Facility precautions and safety procedures.
 - E. Emergency procedures in the event of accidental exposures to hazardous materials, including emergency phone numbers and the location of safety equipment.
 - F. Hazardous chemical labeling systems used in contracted work area.
 - G. Directions to and appropriate locations for eating, drinking, smoking and sanitation facilities.

ARTICLE 2.0
INFORMATION

- 2.1 I understand that I may not bring onto this Project any substances considered hazardous without prior written consent of the City of Weston.
- 2.2 I understand the method of disposal of any hazardous substance must be approved by the City of Weston.
- 2.3 I have been given the locations in which contract operations will take place and I understand how to evacuate safely from the areas in the event of an emergency.
- 2.4 I have been given an opportunity to ask questions about the Hazard Communication Standard and to have those questions answered.

ARTICLE 3.0
CONTAMINATION, CLEAN-UP AND REMEDIATION

I understand that I will be responsible for any contamination and accidental exposures which I have caused during this Project, and that I shall be solely responsible for the notification, clean-up and remediation as prescribed by and in accordance with all applicable Federal, State and local agencies having jurisdiction.

I have read and understand the above statements. I agree to perform all construction services in accordance with these statements and all governing laws and regulations.

Contractor:

Witness

Name of Contractor

Print Name

Signature

Witness

Print Name, Title

Print Name

_____ day of _____, _____

(CORPORATE SEAL)

END OF HAZCOM TRAINING/INFORMATION

CERTIFICATION TO ACCURACY OF BID

Bidder, by executing this CERTIFICATION TO ACCURACY OF BID Form, hereby certifies and attests that all Forms, Affidavits and documents related thereto that it has enclosed in the bid submittal in support of its Bid are true and accurate. Failure by the Bidder to attest to the truth and accuracy of such Forms, Affidavits and documents shall result in the bid being deemed non-responsive and such bid will not be considered.

Before me, the undersigned authority, on this day personally appeared _____, who, upon being duly sworn, deposes and says:

1. I am _____ of _____, the Bidder that has submitted the attached Bid;
2. I _____ certify that I am authorized to sign this solicitation response on behalf of the Bidder as indicated in Document 00420 as to Corporate Principal, designation letter by Director/Corporate Officer, or other business authorization to bind on behalf of the Bidder.
3. I am fully informed respecting the preparation and contents of the attached Bid and of all Forms, Affidavits and documents submitted in support of such Bid;
4. I attest that all forms, affidavits, certifications, documents, statements, oral, written or otherwise submitted in support of this Bid and included in this Bid are true and accurate;
5. No information that should have been included in such forms, affidavits, certification and documents has been omitted; and
6. No information that is included in such Forms, Affidavits or documents is false or misleading.
7. I acknowledge that untruthful and incorrect statements made in support of the Vendor's response may be used by the City as a basis for rejection, rescission of the award, or termination of the Agreement, and that the City's rights and remedies set forth herein are not exclusive and are in addition to any other rights and remedies available to the City in law or in equity.

[THIS SPACE INTENTIONALLY LEFT BLANK]

CERTIFICATION TO ACCURACY OF BID
(Continued)

I understand that I am swearing or affirming under oath to the truthfulness of the matters set forth above and that the intentional making of a false statement under oath constitutes perjury under Florida law.

_____	_____
Signature (Blue Ink Only)	Date
_____	_____
Print Name	Title

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this _____ day of _____, 20____, by _____ as _____.

(Name of person acknowledging) *(Title)*

for _____.

(Company Name)

(NOTARY SEAL)

SIGNATURE OF NOTARY PUBLIC

PRINT, TYPE or STAMP NAME OF NOTARY

Personally Known ____ OR Produced Identification ____

Type of identification Produced _____

Document 00700

**GENERAL CONDITIONS OF THE CONTRACT
FOR CONSTRUCTION**

TABLE OF ARTICLES

1. GENERAL PROVISIONS
2. OWNER
3. CONTRACTOR
4. ADMINISTRATION OF THE CONTRACT
5. SUBCONTRACTORS
6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7. CHANGES IN THE WORK
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11. INSURANCE AND BONDS
12. UNCOVERING AND CORRECTION OF WORK
13. MISCELLANEOUS PROVISIONS
14. TERMINATION OR SUSPENSION OF THE CONTRACT

ARTICLE 1
GENERAL PROVISIONS

1.0 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles and identified references to Articles, Sections and Paragraphs in the document.

1.1 INTERPRETATION

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

1.2 DEFINITION OF CONTRACT TERMS

- A. **Allowance** is the Contractor's cost for materials and equipment delivered at the Project site and all required taxes, less applicable trade discounts.
- B. **Change Order** is a written instrument prepared by the Consultant and signed by the Contractor and approved by the Owner.
- C. **Claim** is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief pursuant to the Contract. The term "Claim" also includes other disputes and matters between the Owner, Consultant or Contractor arising out of or relating to the Contract.
- D. **Construction Change Directive** is a written order prepared and signed by the Consultant and approved by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both.
- E. **Consultant** is the person or corporation identified in the Agreement between Owner and Contractor and on the Project Data Sheet.
- F. **Contract Days** shall mean consecutive calendar days unless otherwise specifically defined.
- G. **Contract Documents** represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written. Unless specifically enumerated in the Agreement, the Contract Documents includes other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, Drawings, the Contractor's bid or portions of addenda relating to bidding requirements).

- H. **Contract Sum** is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.
- I. **Contract Time** the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
- J. **Contractor** is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.
- K. **Consultant or Project Consultant** is the individual or entity identified on the Project Data Sheet as the Project Consultant.
- L. **Cost of Work:** Where no lump sum or unit price is provided within the Contract Documents, work may be authorized by Change Order to be performed by the CONTRACTOR with payment to be made for Contractor's Cost of the material, equipment, and labor furnished, plus the contractually-established fee for Overhead and Profit, up to the maximum amount established in the Change Order.
- M. **Date of Commencement** of the Work is the date established in the Second Notice to Proceed. The date shall not be postponed by the Contractor or by persons or entities for which the Contractor is responsible.
- N. **Drawings** are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. Shop Drawings are not Drawings as so specified.
- O. **Fifty (50) percent completion** is the point at which the Owner has expended 50 percent of the total cost of the Work as identified in the Contract Documents together with all costs associated with existing change orders and other additions or modifications to the Work provided for in the Contract Documents.
- P. **Final Completion** is the complete performance of the Work required in accordance with the Contract Documents.
- Q. **First Notice to Proceed (First NTP):** The written notice to Contractor authorizing preconstruction Work, which includes submission of applications for construction permits to applicable permitting authorities and completion of all other documents or activities required for permitting; submission of a project schedule, schedule of values, submittals, submittal schedule, topographical or physical features surveys, and all warranty forms; and performance of Work that does not require permits.
- R. **Liquidated Damages:** The amount that the Contractor accepts, as stipulated in the Contract Documents, that will be deducted from the Contract Sum for each day of delay due to a Non-excusable Delay.
- S. **Contractor's Liquidated Indirect Costs Rate:** The amount, stipulated in the Contract Documents, that will be added to the Contract Sum for each day of delay due to a compensable delay. The Contractor accepts this sum as full compensation for the

Contractor's and all its Subcontractors' indirect Costs, for each day of Compensable Delays. This amount is agreed to include any costs other than direct costs incurred by the Contractor and all its Subcontractors of any tier in the performance of this Contract.

- T. **Mobilization** is to perform preparatory work and operations in mobilizing for beginning work on the project, including, but not limited to, those operations necessary for equipment, supplies, and incidentals directly related to the project site and for the establishment of temporary offices, buildings, safety equipment and first aid supplies, and sanitary and other facilities, including the costs of bonds and required insurance for the start of the work and excluding the cost of construction materials.
- U. **Modification** is a written amendment to the Contract signed by the Owner, Consultant and/or Contractor.
- V. **Overhead and Profit:** All Contractor's costs associated with insurance premiums, supervision, coordination, superintendents, foremen, consultants, schedulers, estimators, cost controllers, accountants, office administrative personnel, time keepers, clerks, secretaries, watch persons, small tools, equipment or machinery, utilities, office rent, storage rental costs, telephones, facsimile machines, computers, printers, plotters, computer software, all expendable items, job site and general office expenses, profit, extended jobsite general conditions, interest on monies retained by the City, escalated costs of materials and labor, home office expenses or any cost incurred that may be allocated from offices of the Contractor or any of its Subcontractors, loss of any anticipated profits, loss of bonding capacity or capability losses, loss of business opportunities, loss of productivity on this or any other project, loss of interest income on funds not paid, inefficiencies, costs to prepare a bid, cost to prepare a quote for a change in the Work, costs to prepare, negotiate or prosecute claims, costs of legal and accounting work, costs spent to achieve compliance with applicable laws and ordinances, loss of projects not bid upon, and all other expenses not specifically identified as Cost of Work.
- W. **Own Forces** shall mean the Owner's employees, consultants and independent contractors that perform Work on the Owner's behalf under a separate construction agreement.
- X. **Owner** is the City of Weston and its dependent Districts.
- Y. **Owner's Representative** is the City Manager or his/her designee.
- Z. **Product Data** are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- AA. **Project** is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

- BB. **Project Manual** This includes the Notice To Bidders, Instructions To Bidders, Bid Form, Contractor's Qualification Statement, Bid Security/Bond, Addenda, Agreement, General Conditions, Supplemental Conditions, Bonds, Certification of Payment Forms, Consent of Surety, Project Closeout Checklist, Specifications and Drawings, all of which shall also constitute the bidding documents.
- CC. **Samples** are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- DD. **Second Notice to Proceed:** The written notice of Contractor authorizing commencement of construction Work. Except for the reimbursement of permit application fees as may be provided in the Contract Documents, Contractor shall not be entitled to compensation of any kind until issuance of the Second Notice to Proceed. The Contract Time shall commence on the Project Initiation Date stipulated in the Second Notice to Proceed. Delivery of all items and completion of all activities required by the First Notice to Proceed shall be a condition precedent to the issuance of the Second Notice to Proceed.
- EE. **Shop Drawings** are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, Supplier or distributor to illustrate some portion of the Work.
- FF. **Specifications** are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- GG. **Subcontractor** is a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the Project site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
- HH. **Substantial Completion** is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.
- II. **Sub-subcontractor** is a person or entity that has a direct or indirect Contract with a Subcontractor to perform a portion of the work at the Project site. The term "Sub-contractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.
- JJ. **Supplier** is a person or entity that provides equipment and/or materials to the Contractor or Subcontractors for use and/or incorporation into the Project.
- KK. **Work** means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the

Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.3 EXECUTION, CORRELATION AND INTENT

- A. The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor fails to sign all the Contract Documents, the Consultant shall identify such unsigned Documents. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Consultant and Contractor, (2) between the Owner and a Subcontractor, Sub-subcontractor, Subconsultant, Sub-subconsultant or Suppliers (3) or between any persons or entities other than the Owner and Contractor. The Consultant shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Consultant's duties.
- B. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.
- C. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.
- D. Organization of the Specifications into division, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- E. Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
- F. Dimensions given in figures are to hold preference over scaled measurements from the drawings; however, all discrepancies shall be resolved by Consultant. Contractor shall not proceed when in doubt as to any dimension or measurement, but shall seek clarification from Consultant.

1.4 OWNERSHIP AND USE OF CONSULTANT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

The Drawings, Specifications and other documents prepared by the Consultant are instruments of the Consultant's service through which the Work to be executed by the

Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment Supplier shall own or claim a copyright in the Drawings, Specifications and other Documents prepared by the Consultant, and unless otherwise indicated, the Consultant shall be deemed the author of them and Owner will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Consultant, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Consultant and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment Supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Consultant. The Contractor, Subcontractors, Sub-subcontractors and material or equipment Suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Consultant appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Consultant. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Consultant's copyright or other reserved rights.

ARTICLE 2
OWNER'S RESPONSIBILITIES

- 2.1 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary easements.
- 2.2 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.
- 2.3 Unless otherwise provided in the Contract Documents, after the contract is executed between the parties, the Contractor will be furnished, free of charge, three (3) copies of Drawings and Project Manuals as are necessary for execution of the Work.
- 2.4 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors,) Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.5 **OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed by the Owner's Representative may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Paragraph 6.1.C.

2.6 **OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents with due diligence and fails to provide a schedule of repairs and commence the repairs within a period of time, to be determined by the City in its sole discretion, after receipt of written notice from the Owner, the Owner may after such period of time, without prejudice to other remedies the Owner may have, withhold progress payments until the Contractor substantially completes the repairs cited in the Owner's notice. If the Contractor fails to substantially complete the repairs, the Owner may contract with another contractor for the necessary repairs. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The Contractor's failure to substantially complete the repairs may, at the Owner's sole discretion, be a reasonable basis for the Owner to terminate the contract.

2.7 **OWNER'S RIGHT TO PERFORM WORK AT THE SITE**

- A. The Owner and other contractors and subcontractors may be working at the site during the performance of the Construction Contract, and the Contractor's Work may be interfered with as a result of such concurrent activities. Contractor shall fully cooperate with Owner and other contractors to avoid any delay or hindrance of any work. Owner may require that certain facilities be used concurrently by Contractor and other parties and Contractor shall comply with such requirements.
- B. If any part of the Contractor's Work depends on proper execution or results from any work performed by the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acceptance of the Owner or separate contractor's work as fit and proper to receive Contractor's Work; except as to defects which may subsequently become apparent in such work performed by others.

ARTICLE 3
CONTRACTOR'S RESPONSIBILITIES

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

- A. The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner and shall at once report to the Owner and Consultant all errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Consultant for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Owner and Consultant. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Owner and Consultant, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the costs attributable to the correction.
- B. The Contractor shall inspect conditions under which Work is to be performed and verify all dimensions, quantities and details shown on the plans, specifications or other data received from Owner, and shall notify Owner and Consultant of all errors, omissions and discrepancies found therein prior to the Owner's issuance of the Second Notice to Proceed. Failure to notify City of reasonably identifiable errors, omissions, or discrepancies prior to issuance of the Second Notice to Proceed shall preclude Claims for Delay associated with such items. The Contract Base Amount shall be deemed to include the most expensive or comprehensive material or system so as to deliver a complete and functional facility. If Contractor finds any discrepancy between the Contract Documents and the physical conditions of the locality, or any errors, omissions, or discrepancies in the Contract Documents, Contractor shall immediately inform Owner, in writing. Contractor shall have a continuing duty to so notify Owner.
- C. The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Owner and Consultant at once.
- D. The Contractor shall perform the Work in accordance with the Contract Documents and submittals.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

- A. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents specifically provide otherwise.

- B. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a Contract with the Contractor.
- C. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Consultant in the Consultant's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.
- D. The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.3 **SIGNATORY**

- A. Certification of Payment and all other written communications to the Owner shall be signed by the individual whose name appears on the Agreement between the Owner and Contractor.
- B. Certifications of Payment not bearing the proper signatory shall be rejected by the Owner.

3.4 **COMMUNICATION**

The Contractor shall employ and maintain on the Project site at all times supervisory personnel who can effectively communicate with the Owner and Consultant. The Owner shall have the right to determine whether the supervisory personnel's ability to communicate is effective.

3.5 **EMERGENCY SITUATIONS**

The Contractor shall furnish the Owner the name(s) and local telephone numbers(s) of supervisory persons who are available 24 hours per day, 7 days a week (including holidays) in the event of an emergency related to the Project.

3.6 **TELEPHONE, FACSIMILE AND E-MAIL ADDRESS**

The Contractor, through the course of the Project shall maintain an e-mail address, a local telephone office number and a 24/7 contact number for Project site personnel. The Contractor through the course of the Project shall maintain the use of a facsimile machine at his office with a local number.

3.7 **LABOR AND MATERIALS**

- A. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services

necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

- B. The Contractor shall enforce strict discipline and good order among the Contractor's employees and Subcontractors and their employees and all other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.8 **WARRANTY**

The Contractor warrants to the Owner and Consultant that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. The Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All manufacturers' product warranties shall be registered in the Owner's name and for its sole benefit.

3.9 **TAXES**

The Contractor shall pay sales, consumer, use and all other taxes for the Work or portions thereof provided by the Contractor.

3.10 **PERMITS, FEES AND NOTICES**

- A. **PERMITS** The Contractor shall be responsible for securing all Federal, State, County, Municipal and Special Taxing District permits applicable to this Project.
- B. **PERMIT FEES** The Contractor shall be responsible for payment of Federal, State, County, Municipal and Special Taxing District permit fees applicable to this Project.
- C. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.
- D. It is not the Contractor's responsibility to ascertain whether the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly provide written notice to the Owner and Consultant of the necessary changes. The necessary changes will be made by the appropriate Modification document.
- E. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the

Owner and Consultant, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

3.11 ALLOWANCES

- A. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.
- B. Unless otherwise provided in the Contract Documents:
 - 1. Materials and equipment under an Allowance shall be selected promptly by the Owner to avoid delay in the Work;
 - 2. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated Allowance amounts shall be included in the Contract Sum and not in the Allowances;
 - 3. Whenever costs are more or less than Allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the Allowances under Paragraph 3.11 and (2) changes in Contractor's costs under provision (2) of this section.

3.12 SUPERINTENDENT

- A. The Contractor shall employ a competent Superintendent, who is conversant in the English language, and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor. All communications shall be confirmed in writing. The name of the Superintendent shall be supplied to the Owner and Consultant in writing prior to commencing Work. The Superintendent shall not be changed except with the written consent of Owner, unless the Superintendent proves to be unsatisfactory to the Contractor and ceases to be in its employ.
- B. The Superintendent shall possess the necessary knowledge and skills to effectively communicate with the Owner and Consultant. The Owner shall have the right to determine whether the Superintendent's communication is effective.

3.13 CONTRACTOR'S CONSTRUCTION SCHEDULES

- A. The Contractor, promptly after being awarded the Contract and after being issued the First Notice to Proceed, shall prepare and submit to the Owner a Contractor's construction schedule for approval. The schedule shall not exceed time limits contained in the Contract Documents.

- B. The construction schedule shall identify significant milestones including long lead items and critical path supplies, shall denote achievement or delays of critical milestones as related to the ability to complete the Project, according to the Contract Documents and shall be updated and distributed at regular intervals in strict accordance with the Contract Documents that contain specific requirements for the form, content and date of submission of the baseline schedule and all schedule updates. The schedule shall be related to the entire Project and shall provide for expeditious and practicable execution of the Work.
- C. The Contractor shall prepare and keep current, for the Consultant's approval, a schedule of submittals that is coordinated with the Contractor's construction schedule and allows the Consultant reasonable time to review submittals.
- D. The Contractor shall furnish sufficient forces, offices, facilities and equipment, and shall work such hours, including night shift and overtime operations, as necessary to ensure the prosecution of the work in accordance with the current monthly updated progress schedule. In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor, in writing, to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, (3) re-sequencing the Work to avoid the effects of the potential delay; and (4) other similar measures utilizing the most cost effective and reasonable acceleration methods possible to avoid delays and liquidated damages (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents and approved Construction Schedule. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule. The Contractor shall be responsible for liquidated damages for delays for failure to meet the Construction Schedule and to complete the Work within the Contract Time. All Extraordinary Measures required to keep the Project on schedule and to avoid delays shall not be considered a Cost of the Work and shall not be a basis to increase the Contract Sum. Should Contractor fail to perform the Extraordinary Measures as provided herein, the Owner shall give the Contractor a three (3) business day notice of default. If the Contractor does not commence and continue to correct the default as provided in this Section, then the Owner may supplement Contractor's crews, supply additional manpower, equipment and facilities, and/or other similar measures to avoid delays. Contractor and Surety shall be liable to Owner for all costs incurred by Owner pursuant to this Section. If Contractor does not perform its obligations pursuant to this Section, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost incurred pursuant to this Section. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor and Surety shall pay the difference to the Owner. All time limits and obligations are of the essence in the Contract Documents.

3.14 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner, one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These items shall be available to the Consultant and shall be delivered to the Consultant for submittal to the Owner upon completion of the Work.

3.15 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- A. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required, the way the Contractor proposes to conform to the information given, and the design concept expressed in the Contract Documents. Review by the Consultant is subject to the limitations of Paragraph 4.2. (G).
- B. The Contractor shall review, approve and submit to the Consultant Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor that are not required by the Contract Documents may be returned without actions.
- C. The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the Consultant has approved the respective submittal. Such Work shall be in accordance with approved submittals.
- D. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- E. The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals regardless of whether the Contractor has specifically informed the Consultant in writing of such deviation at the time of submittal and the Consultant has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Consultant's approval thereof.
- F. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Consultant on previous submittals.

- G. Informational submittals upon which the Consultant is not expected to take responsive action may be so identified in the Contract Documents.
- H. When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Consultant shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.16 USE OF SITE

- A. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.
- B. The Contractor shall maintain the Project site in a safe manner and shall take extreme care to avoid attractive nuisances and hazards to the public. The construction area shall be secured from unauthorized and/or inadvertent entry at all times.
- C. The Contractor shall be permitted to store materials limited to this Project only on the Project site. Materials for Contractor's other projects shall not be permitted at the Project site. All materials stored at the Project site by the Contractor shall be in a safe manner and not obstructing the use of the site.
- D. The Contractor shall be solely responsible for security of materials stored by him at the Project site.

3.17 TEMPORARY FACILITIES

A. Temporary Restrooms

1. The Contractor shall be responsible for providing and removing temporary restrooms for all Contractor's/Sub-contractors' personnel. Use of the Owner's existing washrooms, lavatories, sanitary facilities or plumbing fixtures by construction personnel and workers shall not be permitted.
2. Sanitary and Other Organic Wastes: The Contractor shall establish a regular daily collection of all sanitary and organic wastes (includes food waste). This includes all waste and refuse from all sanitary facilities such as restrooms for Contractor personnel and all temporary restrooms facilities and trailers provided as part of the project. All organic waste material generated from any other sources related to the Contractor's operations, shall be disposed off away from the site in a manner satisfactory to the Owner and in accordance with all laws and regulations pertaining thereto.

B. Temporary Electric

1. The Contractor shall be responsible to bring, connect, disconnect and remove any temporary electric service to the Project site.

2. The Contractor shall be responsible to pay all connection and monthly electric charges billed by FPL.

C. Temporary Water and Sewer

1. The Contractor shall be responsible to bring, connect, disconnect and remove any temporary water and sewer services to the construction site.
2. The Contractor shall be responsible to pay all connection and monthly service charges billed by the utility provider, inclusive of hydrant meter rentals.

D. Temporary Structures

1. The Contractor shall be responsible for providing and removing a temporary trailer that has been approved by the Owner. In the trailer the Contractor shall provide, for the duration of the Work, a suitable lockable office for the Field Construction Manager and other designated personnel.
2. The Contractor shall seek the Owner's permission for the placement of any temporary structures on the Project site and shall be responsible for the removal of those that may be permitted.
2. The Contractor shall be responsible for obtaining any and all applicable permits for and prior to the placement of a temporary structure on the job site.
4. Temporary structures shall be placed in accordance with all applicable Federal, State, County, Special District and Municipal codes and ordinances.

3.18 CUTTING AND PATCHING

- A. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
- B. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.19 CLEANING UP

- A. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. All food waste and rubbish shall be removed daily. At completion of the

Work the Contractor shall remove from and around the Project site waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

- B. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.
- C. The Contractor shall be responsible for the safe, neat and secure on-site retention of solid waste generated during the course of construction.
- D. The Contractor shall not be permitted to use the Owner's solid waste facilities.
- E. The Site includes the immediate area of the Site, ingress and egress routes through Owner's property (City Limits). Proper care shall be taken to avoid debris, trash, soil, gravel, rock, liquid or other materials from being deposited on roads or common areas of the Owner's adjacent property. The Contractor is responsible for providing a method of cleaning and or removing such debris or spillage as part of its Site responsibilities. In the event the Owner provides the means to clean or remove such debris or spillage from ingress or egress routes, the Contractor will be responsible for reasonable reimbursement to the Owner.
- F. Temporary restoration of asphalt pavement and other surfaces disturbed by the work shall occur the same day that work has been completed within the disturbed area.
- G. Permanent restoration of paved areas shall not occur prior to pipes being tested for leaks and construction within the disturbed pavement area being completed and inspections approved, but not later than 10 working days after completion of these items. For a project with multiple sites throughout the CITY, the requirement for permanent restoration work within 10 working days shall apply to each site independently unless otherwise directed.
- H. All other areas disturbed by the work shall be restored, within 10 working days of completion of construction at the contractor's expense, to a condition equal to or better than that of the surrounding adjacent areas, with materials matching the surrounding adjacent materials. For a project with multiple sites throughout the CITY, the requirement for permanent restoration work within 10 working days shall apply to each site independently unless otherwise directed.

3.20 **ACCESS TO WORK**

The Contractor shall provide the Owner and Consultant access to the Work in preparation and progress wherever located.

3.21 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Consultant harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers are required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Consultant.

3.22 INDEMNIFICATION

A. **General Indemnification.** The Contractor shall indemnify, defend and hold harmless and at Owner's option, pay for an attorney selected by Owner, to defend the Owner and the Owner's Consultant, Engineer, Attorneys and assigns and their officials, employees and agents (collectively referred to as "Indemnities") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of the services contemplated by this Contract which is or is alleged to be directly or indirectly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of the Contractor or its employees, agents or subcontractors (collectively referred to as "Contractor"), regardless of whether it is, or is alleged to be, caused in whole or in part (whether joint, concurrent or contributing) by any act, omission, default or negligence (whether active or passive) of the Indemnities, or any of them or (ii) the failure of the Contractor to comply with any of the paragraphs herein or the failure of the Contractor to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal or state, in connection with the performance of this Contract.

B. **Indemnification for Construction Contracts.** In the event that the performance of services under this Contract is deemed to be a "construction contract" pursuant to §725.06, Florida Statutes, as may be amended from time to time, the following indemnification shall apply in lieu of Paragraph A. above.

To the fullest extent permitted by Chapter 725, Florida Statutes, as may be amended, the Contractor hereby agrees to indemnify and hold harmless the Owner, its officers and employees from liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract Documents.

- C. The indemnification obligations under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor and/or persons employed or utilized by the Contractor, in the performance of the Contract Documents under any insurance required by the Contract Documents including, but not limited to, workers' compensation acts, disability benefit acts, or other employee benefit acts.
- D. The obligations of the Contractor under the Agreement shall not extend to the liability of the Consultant, the Consultant's consultants, and agents and employees or any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Consultant, the Consultant's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

3.23 RIGHT TO AUDIT PROVISIONS

- A. Contractor's records which shall include, but not be limited to, accounting records, written policies and procedures, computer records, disks and software, videos, photographs, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this Contract shall be open to inspection and subject to audit and/or reproduction, during normal working hours by the Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by the Contractor or any of Contractor's payees pursuant to the execution of the Contract. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Contract.
- B. Contractor shall retain such records in accordance with applicable local, state and federal law, and Owner and Owner's agent or authorized representatives shall have access to such records for the purpose of such audits, inspections, examinations and evaluations from the effective date of the Contract through the applicable retention time period.
- C. Contractor shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirement hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all related payees' costs from amounts payable to the Contractor pursuant to this contract.
- D. If an audit inspection or examination in accordance with this article, discloses overcharges (of any nature) by the Contractor to the Owner in excess of 10% percent of the total contract billings, the actual cost of the Owner's audit shall be paid by the Contractor.

ARTICLE 4
ADMINISTRATION OF THE CONTRACT

4.1 CONSULTANT

- A. Duties, responsibilities and limitation of authority of the Consultant as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner.
- B. In case of termination of employment of the Consultant, the Owner shall appoint a Consultant whose status under the Contract Documents shall be that of the former Consultant.

4.2 CONSULTANT'S ADMINISTRATION OF THE CONTRACT

- A. The City has contracted with Consultant so that the Consultant shall provide administration of the Contract as described in the Contract Documents, and shall be the Owner's representative (1) during construction (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Consultant will advise and consult with the Owner. The Consultant shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.
- B. The Consultant shall have access to the site at intervals appropriate to the state of construction to inspect progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, shall be in accordance with the Contract Documents. The Consultant shall be required to make on-site inspections to check quality and/or quantity of the Work. On the basis of on-site inspections, the Consultant shall keep the Owner informed of progress of the Work, and shall guard the Owner against defects and deficiencies in the Work.
- C. The Consultant shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Article 3. The Consultant will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents except as otherwise provided herein. The Consultant will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the work except as otherwise provided herein.

- D. **Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Consultant. Communications by and with the Consultant's consultants shall be through the Consultant. Communications by and with Subcontractors and material Suppliers shall be through the Contractor. Communications by and with separate Consultants shall be through the Owner.
- E. Based on the Consultant's inspection and evaluation of the Contractor's Applications for Payment, the Consultant shall review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- F. City has granted to the Consultant authority to reject Work that does not conform to the Contract Documents. Whenever the Consultant considers it necessary or advisable for implementation of the intent of the Contract Documents, the Consultant shall have authority to require additional inspection or testing of the Work in accordance with Paragraphs 13.6. (B) and (C), whether or not such Work is fabricated, installed or completed. However, neither this authority of the Consultant nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Consultant to the Contractor, Subcontractors, material and equipment Suppliers, their agents or employees, or other persons performing portions of the Work.
- G. City has granted to the Consultant authority to review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consultant's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Consultant's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Consultant's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Article 3. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of any construction means, methods, techniques, sequences or procedures. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- H. City has granted to the Consultant authority to prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

- I. City has granted to the Consultant authority to conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.
- J. If the Owner and Consultant agree, the Consultant shall provide one or more project representatives to assist in carrying out the Consultant's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.
- K. City has granted to the Consultant authority to interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor, The Consultant's response to such requests shall be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Consultant shall be furnished in compliance with the Paragraph 4.2, then delay shall not be recognized on account of failure by the Consultant to furnish such interpretations until 15 days after written request is made for them.
- L. Interpretations and decisions of the Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Consultant shall endeavor to secure faithful performance by the Contractor.

4.2 CLAIMS AND DISPUTES

- A. The responsibility to substantiate Claims shall rest with the party making the Claim. All Claims must be made in writing and addressed to the Owner and/or the Owner's Representative.
- B. **Process for Resolving a Claim.** Any and all Claims made by the Contractor shall be submitted to the Consultant. The Consultant shall review the Claim and make a recommendation to the Owner. The Owner shall render a final decision on regarding the Claim. A decision by the Owner shall be required as a condition precedent to litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed.

- C. **Time Limits on Claims.** Claims by the Contractor must be made within 30 days after occurrence of the event giving rise to such Claim or within 30 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims by the Consultant, Contractor or their subcontractors must be made by written notice to the Owner. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.
- D. **Continuing Contract Performance.** Pending final resolution of a Claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.
- E. **Claims for Concealed or Unknown Conditions.** If conditions are encountered at the Project site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Consultant shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the work, shall recommend to the Contractor, with the Owner's approval, an equitable adjustment in the Contract Sum or Contract Time, or both. If the Consultant determines that the conditions at the Project site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Consultant shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Consultant has given notice of the decision. If the Consultant and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Owner for final determination.
- F. **Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceedings to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Consultant (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Consultant, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension, Claim shall be filed in accordance with the procedure established herein.

G. Claims For Additional Time.

1. If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and a probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.
2. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that whether conditions had an adverse effect on the scheduled construction.

H. Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance of the injury or damage. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Paragraphs 4.3. (F) or (G).

4.3 RESOLUTION OF CLAIMS AND DISPUTES

- A. The Consultant shall review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Consultant expects to take action, (3) suggest a compromise. The Consultant may, at the Owner's direction, notify the surety, if any, of the nature and amount of the Claim. The Consultant shall notify the Owner or the Claimant. The Owner shall make the final determination of whether to pay or dispute the Contractor's Claim.
- B. If a Claim has been resolved, the Consultant shall prepare or obtain appropriate documentation.
- C. If a Claim has not been resolved, the party making the Claim shall, within ten days after the Consultant's preliminary response, take one or more of the following actions; (1) submit additional supporting data requested by the Consultant (2) modify the initial Claim or (3) notify the Consultant that the initial Claim stands.

- D. The Consultant shall notify the parties in writing of the Owner's decision within seven days of receipt of (1) additional supporting data or, (2) a request to modify the initial Claim or (3) that the initial Claim stands and the Owner's decision shall be final and binding on the parties but subject to review by a court of competent jurisdiction. The Consultant shall prepare or obtain appropriate documentation regarding the Claim. If there is a surety and there appears to be a possibility of a Contractor's default, the Consultant may, at the Owner's direction, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

ARTICLE 5
SUBCONTRACTORS

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- A. Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and the Consultant the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Consultant shall within 30 days reply to the Contractor in writing stating whether or not the Owner or the Consultant, after due investigation, objects to any such proposed person or entity.
- B. The Contractor shall not contract with a proposed person or entity which the Owner or Consultant has made an objection. The Contractor shall not be required to contract with anyone with whom the Contractor has an objection.
- C. If the Owner or Consultant has objection to a person or entity proposed by the Contractor, the Contractor shall propose another with whom the Owner or Consultant has no objection.
- D. The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Consultant makes objection to such change.
- E. The Contractor shall be responsible and liable to the Owner for all work performed by the Subcontractors or their employees, agents or contractors, pursuant to this Agreement.

5.2 SUBCONTRACTUAL RELATIONS

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

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

- A. Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:
 - 1. assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Sub-contractor in writing; and
 - 2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

- A. The Owner reserves the right to perform construction or operations related to the Project with the Owner's Own Forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor may make such Claim as provided in this Agreement.

- B. When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
- C. The Owner shall provide for coordination of the activities of the Owner's Own Forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.2 MUTUAL RESPONSIBILITY

- A. The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
- B. If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner and Consultant apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to report apparent discrepancies shall constitute an acknowledgement that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.
- C. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.
- D. The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Paragraph 10.2. (E).
- E. Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraph 4.3 provided the separate contractor has reciprocal obligations.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.19, the Owner may clean up and allocate the cost among those responsible as the Owner determines to be just.

ARTICLE 7
CHANGES IN THE WORK

7.1 CHANGES

- A. Changes in the Work may be accomplished after execution of the Contract only by written Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
- B. A Change Order shall be based upon agreement among the Owner, Contractor and Consultant; a Construction Change Directive requires agreement by the Owner and Consultant and may or may not be agreed to by the Contractor; the Consultant alone may issue an order for a minor change in the Work.
- C. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.2 VALUE OF CHANGED WORK

- A. The value of any changed Work covered by a Change Order shall be determined in one of the following ways:
 - 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. Unit prices are understood to include a component for overhead and profit
 - 2. By mutual acceptance of a lump sum which Contractor and Owner acknowledge contains a component for overhead and profit.
 - 3. On the basis of the "Cost of Work," plus the Contractor's fee for Overhead and Profit.
- B. Unit Price Calculation:
 - 1. When unit prices are included in the Contract, Owner shall pay to Contractor the amounts determined for the total number of each of the units of work completed at the unit price stated in the Schedule of Prices Bid. The number of units contained in the bid is an estimate only, and final payment shall be made for the actual number of units incorporated in or made necessary by the Contract Documents, as may be amended by Change Order. Unit prices shall be full compensation for all costs, including overhead and profit, associated with completion of the Unit in full conformity with the requirements as stated in the Contract Documents.

2. Unit prices shall be those described in the Contract Documents. To be compensable, units must be measured daily by the Contractor and approved in writing by the Owner.
3. In no event shall the Contractor be entitled to compensation greater than the aggregate amount of the unit price times the original bid quantity of Work shown in the Bid Form unless authorized by Change Order.
4. The Contractor shall not be entitled to any additional compensation if actual quantities of Work performed are less than the estimated quantities shown in the Bid Form.
5. All final measurements for unit price work shall be performed by the Owner which shall afford the Contractor an opportunity to witness or to participate in the calculation of measurements and to review all calculations.

C. Lump Sum Calculation:

Lump sum price Change Orders shall be based on the Owner's proposal request, Contractor's responsive estimate, and mutual agreement between the Owner and the Contractor. In cases where the Owner and the Contractor cannot mutually agree, the extra Work will be performed on a "Cost of Work" basis.

D. Cost of Work Calculation:

1. The term "Cost of the Work" shall mean the sum of those allowed direct costs necessarily incurred and paid by Contractor in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by Owner, such costs shall include only the following items:
 - a. Payroll costs for employees in the direct employ of Contractor in the performance of the Work described in the Change Order; payroll costs for employees not employed full time on the changed Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include salaries or wages at straight or overtime rates plus the cost of applicable fringe benefits which shall include social security contributions, unemployment and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay. Employees shall not include superintendents and forepersons at the site. Overtime shall be included in the above only to the extent previously authorized by Owner in writing.
 - b. Cost of all materials and equipment furnished and incorporated in the changed Work including costs of transportation and storage. All trade discounts, rebates and refunds, and all returns

from sale of surplus materials and equipment, shall accrue to Owner.

- c. The rental cost of any equipment used exclusively for the changed Work, if the equipment is not used for any other part of the Work.
- d. Payments made by Contractor to Subcontractors for work performed by Subcontractors. Owner may direct Contractor to obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to Owner.
- e. Sales and use taxes related to the Work, and for which Contractor is liable, imposed by any governmental authority.
- f. Royalty payments and fees for permits and licenses for changed Work when the permit or license is issued in the name of Owner.
- g. Cost of premiums for additional bonds required because of changes in the Work, provided that no markup or fee will be paid on these costs.

2. The term "Cost of Work" shall not include Overhead and Profit or any of the following:

- a. Costs due to the negligence or neglect of Contractor, any Subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.
- b. Costs to correct defective Work, disposal of materials or equipment wrongly supplied, and restoring any damage to property.
- c. Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the changed Work.
- d. Cost of materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools, which are not consumed in the performance of the Work.
- e. The cost of additional utilities, fuel and sanitary facilities at the site.
- f. Cost of any item not expressly included in paragraph 7.2(D)1.

7.3 CHANGE ORDERS

- A. A Change Order is a written instrument prepared by the Consultant and signed by the Owner, Contractor and Consultant, stating their agreement upon all of the following:
1. a change in the Work;
 2. the amount of the adjustment in the Contract Sum, if any
 3. the extent of the adjustment in the Contract Time, if any.

B. Overhead and Profit

Contractor's fee allowed for Overhead and Profit on Cost of Work shall be as follows:

1. For allowed costs when the Work is performed by the Contractor's own forces, Contractor's fee shall be fifteen percent (15%) of the direct Cost of the Work, excluding the cost of additional insurance and bonds.
 2. For allowed costs incurred when the Work is performed by Subcontractors, Contractor's fee shall be ten percent (10%) of the direct Cost of the Work, excluding the cost of additional insurance and bonds. 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%).
 3. No fee shall be payable on items included in Overhead and Profit.
 4. No fee shall be payable to Contractor for costs incurred under 7.3(B)2, where the Subcontractor is owned by, or an affiliate of, Contractor, by common ownership or management, or is effectively controlled by Contractor. For purposes of this provision, this would include an affiliate of any member of the Contractor team or entity, whether Limited Liability Company, Partnership, Joint Venture, or otherwise.
- C. Each Change Order amount shall include all costs for the time associated with the changed Work, when the Contractor is entitled to Compensable Excusable Delay. No separate payment shall be made for delay or extensions to the Contract Time for changed Work, and no reservation of claims for additional time by the Contractor shall be valid unless the reservation includes the number of days reserved and the scope of Work associated with those days.
- D. Bond Allowance for maintaining the Performance Bond at 100% of the contract amount, a sum of one percent (1%) of the total cost of the change (including material, labor, overhead and profit, and equipment rentals) shall be allowed on all change orders. For all Change Orders issued, Contractor shall deliver a Consent of

Surety adjusting the Payment and Performance Bonds by the amount of the Change Order.

- E. Should the Contractor and Owner fail to agree as to the necessity of a Change Order, the matter will be referred to the Consultant for determination. Pending final determination of such a dispute, the Contractor shall proceed with the performance of the Contract.

7.4 CONSTRUCTION CHANGE DIRECTIVES

- A. The Owner may by Construction Change Directive, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
- B. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- C. A Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods;
 - 1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - 2. unit prices stated in the Contract Documents or subsequently agreed upon;
 - 3. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 - 4. as provided in Paragraph 7.4 (F).
- D. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Consultant of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
- E. A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
- F. If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Paragraph 7.4. (C), the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with

appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Paragraph shall be limited to the following:

1. costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
 2. costs of materials, supplies and equipment including cost of transportation, whether incorporated or consumed;
 3. rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
 4. costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
 5. additional costs of supervision and field officer personnel directly attributable to the change.
- G. Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Consultant. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to the change.
- H. If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Consultant for determination.
- I. When the Owner and Contractor agree concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.5 MINOR CHANGES IN THE WORK

The Consultant will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. The Contractor shall carry out such written orders promptly.

7.6 CLAIMS SUBMITTAL PROCEDURES

Written notice stating the general nature of each claim shall be delivered by the party making the claim to the Consultant and all of the parties to the Contract promptly, but in no event later than 30 calendar days after the start of the event giving rise to the claim. The party making the claim shall have the responsibility to substantiate the claim. Notice of the

amount of the claim or extent of the claim, with sufficient supporting data shall be delivered to the Consultant and all of the parties to the Contract within 60 calendar days after the start of the event, unless Consultant or the other party allows additional time for claimant to submit additional or more accurate data in support of such claim. Should Contractor fail to comply with the time limits described in this Section, Owner shall have the right to deny payment for the Change Order.

ARTICLE 8 **TIME**

8.1 PROGRESS AND COMPLETION

- A. Time limits stated in the Contract Documents are essential to the Contract. By executing the Agreement, the Contractor confirms that the Contract time is a reasonable period for performing the Work.
- B. The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.
- C. The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.2 DELAYS AND EXTENSIONS OF TIME

- A. Except as provided in this Article, Contractor shall not be entitled to any damages for Delay. No claim for damages or any claim, other than for an extension of time, shall be made or asserted against City by reason of any delays except as provided herein. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by Contractor for actual delays due solely to fraud, bad faith or active interference, not merely negligence, on the part of City, its Consultant or its agents. Otherwise, Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.
- B. The Contractor shall document its Claim for any Contract Time extension in accordance with the requirements of the Contract Documents. Failure of the Contractor to comply with all requirements as to any particular event of Project Delay shall be deemed conclusively to constitute a waiver, abandonment or

relinquishment of any and all Claims resulting from that particular event of Project delay.

- C. Non-Excusable Delay. Any Delay which extends the completion of the Work or portion of the Work beyond the Contract Time and which is caused by the act, fault or omission of the Contractor or any Subcontractor, materialman, supplier or vendor to the Contractor. Delays in obtaining permits caused by the Contractor's actions or lack of actions are Non-Excusable Delays. A Non-Excusable Delay shall not be cause for granting a Contract Time extension and shall subject the Contractor to Liquidated Damages.
- D. Excusable Delay. An Excusable Delay may be compensable or non-compensable. The Contractor shall be entitled to Liquidated Indirect Costs for Compensable Excusable Delay, in accordance with the Contract Documents.
- E. When the Work is extended beyond the Contract Time due to an Excusable Delay, a Change Order must authorize an extension of the Contract Time. When the Excusable Delay is caused by authorized changed Work, the cost of the changed Work and the Excusable Delay shall be included in the same Change Order.
- F. Compensable Excusable Delay:
 - 1. The Delay is caused by circumstances beyond the control of the Contractor or its Subcontractors, materialmen, suppliers or vendors, and
 - 2. Caused solely by fraud, bad faith or active interference, not merely negligence, on the part of City, its Consultant or its agents, and
 - 3. The Delay is not concurrent with a Non-Compensable Delay.
- G. Non-Compensable Excusable Delay:
 - 1. The Contractor shall be entitled only to a time extension and no further compensation for Non-Compensable Excusable Delay.
 - 2. Non-Compensable Excusable Delay may be caused by circumstances beyond the control of the Contractor, its Subcontractors, materialmen, suppliers and vendors, and is also caused by circumstances beyond the control of the City and the Consultant, such as delay(s) caused by the permitting agencies, to the extent that such delays were not caused by the Contractor, or
 - 3. Non-Compensable Excusable Delay may be caused jointly or concurrently by the Contractor or its Subcontractors, materialmen, suppliers or vendors and by the City or the Consultant, or
 - 4. Non-Compensable Excusable Delay may be caused by performance of additional unit price Work that extends the Contract Time.

- H. Weather may be grounds for Non-compensable Excusable Delay when rains or other inclement weather conditions or related adverse soil conditions result in Contractor being unable to work at least fifty percent (50%) of the normal workday on controlling items of work identified on the accepted updated progress schedule.
- I. In no event shall the Contractor be excused for interim Delays, which do not extend the Contract Time or Milestones.
- J. Nothing in this Contract shall be construed as waiving City's right to Liquidated Damages for delays due to failure of Surety, Delays as a result of the Contractor's failure to carry out the instructions of the City, or for any other Delays not specifically deemed to be Excusable Delay.
- K. If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Consultant, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending litigation, or by other causes which the Consultant and Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner and Consultant may determine.
- L. Claims relating to time shall be made in accordance with applicable provisions of Paragraphs 4.3 and 7.5.

ARTICLE 9 **PAYMENTS AND COMPLETION**

9.1 SCHEDULE OF VALUES

In accordance with the First Notice to Proceed, the Contractor shall submit to the Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner and Consultant may require. This schedule, once approved by the Owner, shall be used as a base line schedule of values for all of the reviewing of the Contractor's Applications for Payment.

9.2 MOBILIZATION PAYMENT

- A. Basis of Payment. When the Bid includes a separate item of payment for this work, the work and incidental costs specified as being covered under this Section will be paid for at the Contract lump sum price for the item of Mobilization.
- B. Partial Payments. When the Bid includes a separate pay item for Mobilization, partial payments will be made hereto in accordance with the following:

Percent of Original Contract Amount Earned	Allowable Percent of the Lump Sum Price for the Item*
5	25
10	50
25	75
50	100
* Partial payments for any project will be limited to the applicable retainage amount for that project. Any remaining amount will be paid upon completion of all work on the project.	

The standard retainage, as specified in the Contract Documents will be applied to these allowances. Partial payments made on this item will in no way act to preclude or limit any of the provisions for partial payments otherwise provided for by the Contract. When more than one project or job is included in the Contract, the above percentages shall apply separately to each job which has a separate pay item for Mobilization. As an exception to partial payments being made based on Percent of Original Contract Amount Earned, the Owner will pay the Contractor the invoice price of the Contract Bond when the Engineer has been furnished with a certified copy of the invoice from the Bonding Company. No other work will be required to receive payment for the Contract Bond included in the bid price for Mobilization.

- C. When No Separate Item is Included in the Bid. When the Bid does not include a separate item for Mobilization, all work and incidental costs specified as being covered under this Section will be included for payment under the several scheduled items of the overall Contract, and no separate payment will be made.

9.3 APPLICATIONS FOR PAYMENT

- A. At least ten days before the date established for each progress payment, the Contractor shall submit to the Consultant an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, such as copies of requisitions from Subcontractors and material Suppliers and reflecting retainage if provided for elsewhere in the Contract Documents.
- B. With each Application for Payment, Contractor shall provide the Consultant with a sworn statement from each and every Supplier, Subcontractor and Sub-subcontractors that the Contractor has paid for any and all materials, equipment and Work itemized in the prior application as being supplied and/or performed by the Supplier, Subcontractor and sub-subcontractors.
- C. Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material Supplier because of a dispute or other reason.

- D. The Owner shall only pay for materials satisfactorily incorporated into the Work and shall not pay for materials stored at the Project site or elsewhere.
- E. Once any material is satisfactorily incorporated into the Work and paid for by the Owner, it shall not be removed from the Work, except upon written approval by the Owner. It shall be the Contractor's sole responsibility to properly secure, cover and prevent the materials from being damaged, destroyed or stolen. If such materials should become damaged, destroyed or stolen, it shall be the Contractor's sole responsibility to replace such materials. No Applications for Payment shall be submitted nor payments made based on the value of materials stored.
- F. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of claims, security interests or encumbrances in favor of the Contractor, Subcontractor's material Suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
- G. Contractor shall maintain in a safe place at the Project site one record copy of all Drawings, Specifications, addenda, written amendments, Change Orders, Work, change directives, field orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to the Owner and Consultant for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to the Consultant for the Owner.

9.4 CERTIFICATIONS OF PAYMENT

- A. After receipt of the Contractor's Application for Payment, Consultant shall either issue to the Owner a Certification of Payment, with a copy to the Contractor, for such amount as the Consultant determines is properly due, or within twenty (20) business days after receipt of the Contractor's Application for Payment, notify the Contractor and Owner in writing of the Consultant's reasons for withholding certification in whole or in part. If Certification of Payment has been issued by the Consultant, payment is due within twenty-five (25) business days after the date on which the payment request or invoice is stamped as received by the Consultant, in accordance with Part VII of Chapter 218, Florida Statutes, as may be amended from time to time, entitled the "Local Government Prompt Payment Act."
- B. The issuance of a Certification of Payment will constitute a representation by the Owner, based on the Consultant's inspection/observations at the Project site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance

with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Consultant. The issuance of a Certification of Payment entitles the Contractor to payment in the amount certified.

9.5 DECISION TO WITHHOLD CERTIFICATION

- A. The Consultant may decide not to certify payment and may withhold a Certification of Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Consultant's opinion the representations to the Owner required by Paragraph 9.4 cannot be made. If the Consultant is unable to certify payment in the amount of the Application, the Consultant will notify the Contractor and Owner as provided in Paragraph 9.4 (B) If the Contractor and Consultant cannot agree on a revised amount, the Consultant will promptly issue a Certificate for Payment for the amount for which the Consultant is able to make such representations to the Owner. The Consultant may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or part of a Certification of Payment previously issued, to such extent as may be necessary in the Consultant's opinion to protect the Owner from loss because of:
1. defective Work not remedied;
 2. third party claims filed or reasonable evidence indicating probable filing of such claims;
 3. failure of the Contractor to make payments properly to Suppliers, Subcontractors, Sub-subcontractors for labor, materials or equipment;
 4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
 5. damage to the Owner or another contractor;
 6. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
 7. persistent failure to carry out the Work in accordance with the Contract Documents.
- B. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.
- C. If a Contractor's Application for Payment is rejected as described herein, and the Contractor submits a corrected Application for Payment which corrects the deficiency specified in writing by the Consultant, the corrected Application for Payment must be paid or rejected on the later of, 10 business days after the corrected Application for Payment is received, or if the Owner is required by

ordinance, charter or law to approve or reject the corrected Application for Payment, the first business day after the next regularly scheduled City Commission meeting held after the corrected Application for Payment is received.

- D. If a dispute between the Owner and the Contractor concerning an Application for Payment, cannot be resolved by the procedure set forth above, the dispute shall be resolved in accordance with the following dispute resolution policy: Proceedings to resolve the dispute shall be commenced no later than 45 days after the date on which the Application for Payment was received and shall be concluded by final decision of the Owner not later than 60 days after the date on which the Application for Payment was received. If the dispute is resolved in favor of the Owner, interest charges shall begin to accrue 15 days after the Owner's final decision. If the dispute is resolved in favor of the Contractor, interest shall begin to accrue as of the original date the payment became due.

9.6 PROGRESS PAYMENTS

- A. In accordance with Part VII of Chapter 218, Florida Statutes, as may be amended from time to time, entitled the "Local Government Prompt Payment Act," the Contractor shall promptly pay each Supplier, Subcontractor, and Sub-subcontractor upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such portion of the Work, the amount to which said Supplier, Subcontractor, and Sub-subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall require each Subcontractor to make payments to Sub-subcontractors in similar manner.
- B. The Consultant will, on request, furnish to a Subcontractor and/or Sub-subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Consultant and Owner on account of portions of the Work done by such Subcontractor or Sub-subcontractor.
- C. Neither the Owner nor Consultant shall have an obligation to pay the Subcontractor except as may otherwise be required by law.
- D. A Certification of Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.7 SUBSTANTIAL COMPLETION

- A. In accordance with Part VII of Chapter 218, Florida Statutes, as may be amended from time to time, entitled the "Local Government Prompt Payment Act," within thirty (30) calendar days after reaching Substantial Completion of the Work or a portion thereof which the Owner agrees to accept separately, the Owner shall develop a list of items required to render complete, satisfactory and acceptable the Work and shall review the list with the Contractor. The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of the Contractor to complete all Work pursuant to the Contract Documents. Upon completion of all items on the list, Contractor may submit a payment request for all remaining retainage withheld by Owner. If a good faith dispute exists as to whether one or more items identified on the list have been completed, Owner may continue to withhold an amount not to exceed 150% of the total costs to complete such items. When the Work or designated portion thereof is substantially complete, the Consultant will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, establish responsibilities of the Owner and Contractor for security, maintenance, utilities, damage to the Work and insurance, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. Said warranties are in addition to the warranty provisions provided in Paragraph 3.8. The Certificate of Substantial Completion shall be submitted to the Owner for its written acceptance of responsibilities assigned to them in such certificate.
- B. Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Consultant, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.8 PARTIAL OCCUPANCY OR USE

- A. The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Consultant. Consent to the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the work shall be determined by written agreement between the Owner and Contractor, or if no agreement is reached, by decision of the Consultant.

- B. Immediately prior to such partial occupancy or use, the Owner, Contractor and Consultant shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- C. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.9 FINAL COMPLETION AND FINAL PAYMENT

- A. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon a receipt of a final Application for Payment, the Consultant will promptly make such inspection and, when the Consultant finds the Work acceptable under the Contract Documents and the Contract fully performed, the Consultant will promptly issue a final Certification of Payment stating that to the best of the Consultant's knowledge, information and belief, and on the basis of the Consultant's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Consultant's final Certification of Payment will constitute a further representation that conditions listed in this Article as precedent to the Contractor's being entitled to final payment have been fulfilled.
- B. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Consultant (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) establishing payment or satisfaction of obligations, such as receipts, releases and waivers of claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such claim. If such claim remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorney's fees.

- C. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Consultant so confirms, the Owner shall upon application by the Contractor and certification by the Consultant, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contact Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Consultant prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- D. Acceptance of final payment by the Contractor, Subcontractors, Sub-subcontractor, and Suppliers shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

- A. The Contractor shall be responsible for initiating, maintaining and supervision all safety precautions and programs in connection with the performance of the Contract.
- B. In the event the Contractor encounters on the Project site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) that has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Consultant in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.
- C. The Contractor shall not be required to Work in an area on the Project site that contains asbestos or polychlorinated biphenyl (PCB).

10.2 SAFETY OF PERSONS AND PROPERTY

- A. The Contractor shall take responsible precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
 - 1. employees at the Project site and other persons who may be affected thereby;

2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
 3. other property at the Project site or adjacent thereto, such as trees, shrubs, lawns, walks, relocation or replacement in the course of construction.
- B. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property for their protection from damage, injury or loss.
 - C. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
 - D. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
 - E. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in this Section caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Paragraphs 10.2 (A) except damage or loss attributable to acts or omissions of the Owner or Consultant or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Article 3.
 - F. The Contractor shall designate a responsible member of the Contractor's organization at the Project site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the Owner and Consultant.
 - G. The Contractor shall not load or permit any part of the construction or Project site to be loaded so as to endanger its safety.

10.3 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 3.5 and Article 7.

ARTICLE 11
INSURANCE AND BONDS

11.1 INSURANCE

Contractor shall provide all insurance as specified in the Bid documents.

11.2 PERFORMANCE BOND, PAYMENT BOND AND WARRANTY BOND

- A. The Owner shall have the right to require the Contractor to furnish security covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.
- B. Upon the request of any person or entity appearing to be a potential beneficiary of security covering payment of obligations arising under the Contract, the Contractor shall furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12
UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

- A. If a portion of the Work is covered contrary to the Consultant's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Consultant, be uncovered for the Consultant's inspection and be replaced at the Contractor's expense without change in the Contract Time.
- B. If a portion of the Work has been covered and the Consultant has not specifically requested to observe the Work prior to its being covered, the Consultant may request to see such Work the Contractor shall uncover it. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

- A. The Contractor shall promptly, in a technically appropriate time period, correct Work rejected by the Consultant or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected work, including additional testing and inspections and compensation for the Consultant's services and expenses made necessary thereby.

- B. If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly, in a technically appropriate time period, after receipt of written notice from the Owner unless the Owner has previously given the Contractor a written acceptance of such condition. The one-year period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract and shall be in addition to the warranty provisions of this Agreement. The Owner shall give such notice after discovery of the condition.
- C. The Contractor shall remove from the Project site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- D. If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with the Owner's Right to Carry Out the Work provision of this contract. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Consultant, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Consultant's services and expenses made necessary thereby. If such proceeds of sale do not cover costs, which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.
- E. The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.
- F. Nothing contained in this provision shall be construed to establish a period of limitation with respect to other obligations that the Contractor might have under the Contract Documents. The one-year period in this provision, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Specification or description is intended to establish the type, function, appearance, and quality required. Unless the Specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Consultant for review under the circumstances described below.

1. **"Or-Equal" Items:** If the Consultant determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Consultant as a "or-equal" item, in which case review and approval of the proposed item may, with the Owner's approval, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. Consultant determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;
- b. Contractor certifies that: (i) there is no increase in cost to the Owner; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. **Substitute Items:**

- a. If the Consultant determines that the material or equipment proposed by Contractor does not qualify as an "or-equal" item under paragraph 12.3 (A)(1), it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Consultant to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefore. Consultant will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
- c. The procedure for review by Consultant will be set forth in this paragraph 12.3 (A)(2)(d), and as the Owner or Consultant may decide is appropriate under the circumstances.

- d. Contractor shall first make a written application to Consultant for review of a proposed substitute item of material or equipment that the Contractor seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by Consultant in evaluating the proposed substitute item. The Owner or Consultant may require Contractor to furnish additional data about the proposed substitute item.
- B. **Substitute Construction Methods or Procedures:** If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Consultant. Contractor shall submit sufficient information to allow Consultant to determine that the substitute proposed is equivalent to the expressly called for by the Contract Documents. The procedure for review by Consultant will be similar to that provided in subparagraph 12.3 (A)(2).
- C. **Consultant's Evaluation:** Consultant will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 12.3 (A) and (B). No "or-equal" or substitute will be ordered, installed or utilized until Consultant's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or-equal." Owner retains the right to accept or reject any proposed "or-equal" or substitution, regardless of the Consultant's determination. The Consultant will advise Contractor in writing of any negative determination.

- D. **Consultant's Cost Reimbursement:** Consultant will record time required by Consultant and the Consultant's consultants in evaluating substitute proposed or submitted by Contractor pursuant to paragraphs 12.3 (A)(2) and (B) and in making changes in the Contract Documents (or in the provisions of any other direct contract with Owner for work on the Project) occasioned thereby. Whether or not Owner or Consultant approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Consultant and Consultant's consultants for evaluating each such proposed substitute.
- E. **Contractor's Expense:** Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW; CONSENT TO JURISDICTION

The law of the State of Florida shall govern the Contract. This contract is not subject to arbitration. Contractor is not entitled to Attorney fees should any portion of this contract be subject to litigation. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating to this Agreement. Venue for any action to enforce or related to this Agreement shall be in Broward County, Florida, only. The parties expressly waive all rights to trial by jury, including advisory juries, for any disputes arising from or in any way connected with this Agreement. The parties understand and agree that this waiver is a material contract term.

13.2 ATTORNEY'S FEES

Each party shall bear its own attorney's fees for any litigation related to this Contract.

13.3 SUCCESSORS AND ASSIGNS

The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or portion thereof without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.4 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, if delivered at or sent by registered or certified mail to the last business address known to the party giving notice or by facsimile transmission with proof of receipt.

13.5 RIGHTS AND REMEDIES

- A. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- B. No action or failure to act by the Owner, Consultant or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.6 TESTS AND INSPECTONS

- A. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Consultant timely notice of when and where tests and inspections are to be made so the Consultant may observe such procedures. The Owner shall bear costs of tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded.
- B. If the Consultant, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included in the Contract Documents, the Consultant will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Consultant of when and where tests and inspections are to be made so the Consultant may observe such procedures. The Owner shall bear such costs except as otherwise provided.
- C. If such procedures for testing, inspection or approval reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Consultant's services and expenses, and testing expenses.
- D. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly, in a technically appropriate time period, delivered to the Consultant.
- E. If the Consultant is to observe tests, inspections or approvals required by the Contract Documents, the Consultant will do so promptly and, where practicable, at the normal place of testing.

- F. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly, in a technically appropriate time period, to avoid unreasonable delay in the Work.
- G. The Consultant's first inspection shall be at no charge to the Contractor; however, the actual costs incurred by the City for any subsequent inspections shall be deducted from the final payment to the Contractor.

13.7 INTEREST

Payments due and unpaid under the Contract Documents shall bear **NO** interest from the date payment is due and are not subject to prejudgment interest, if any matter related to payment becomes an issue litigated between the parties.

13.8 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

- A. As between the Owner and Contractor:
 - 1. **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
 - 2. **Between Substantial Completion and Final Certification of Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certification of Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certification of Payment; and
 - 3. **After Final Certification of Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Paragraph 3.8, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

13.9 SOLID WASTE

- A. The Owner has granted to Owner's current contractor, an exclusive franchise for the collection, hauling and disposal of all solid waste, inclusive of construction debris.

- B. The Contractor shall be obligated to use the Owner's solid waste franchisee. The Contractor may haul and dispose of solid waste only with persons directly employed by him and only in vehicles clearly identified with signage as belonging to the Contractor and registered in the Contractor's name, in accordance with applicable City of Weston Code provisions.

13.10 PUBLIC RECORDS

- A. Public Records: Contractor shall comply with The Florida Public Records Act as follows:
1. Keep and maintain public records that ordinarily and necessarily would be required by CITY in order to perform the service.
 2. Upon request by CITY's records custodian, provide CITY 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.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement.
 4. Upon completion of this Agreement or in the event of termination of this Agreement by either party, any and all public records relating to this Agreement in the possession of Contractor shall be delivered by Contractor to CITY, at no cost to CITY, within seven days. All records stored electronically by Contractor shall be delivered to CITY in a format that is compatible with CITY's information technology systems. Once the public records have been delivered to CITY upon completion or termination of this Agreement, Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public record disclosure requirements.
 5. Contractor's failure or refusal to comply with the provisions of this Section may result in the immediate termination of this Agreement by the CITY.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-385-2000, pbates@westonfl.org OR BY MAIL: City Of Weston – Office Of City Clerk, 17200 Royal Palm Boulevard, Weston, FL 33326.

- B. Ownership of Documents: Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City. Any compensation due to Contractor shall be withheld until all documents are received as provided herein.

ARTICLE 14
TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

- A. The Contractor may terminate the Contract if the Work is stopped for a period of 90 days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under Contract with the Contractor, for any of the following reasons:
 - 1. issuance of an order of a court or other public authority having jurisdiction;
 - 2. an act of government, such as a declaration of national emergency, making material unavailable;
 - 3. because the Consultant has not issued a Certification of Payment and has not notified the Contractor of the reason for withholding certification as provided in Paragraph 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;
 - 4. if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less; or
- B. If one of the above reasons exists, the Contractor may, upon 30 additional days written notice to the Owner and Consultant, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including overhead, profit and damages.
- C. If the Work is stopped for a period of 60 days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon 30 additional days written notice to the Owner and the Consultant, terminate the Contract and recover from the Owner as provided in Paragraph 14.1.(A).

14.2 TERMINATION BY THE OWNER

- A. **TERMINATION BY THE OWNER FOR CAUSE**

1. The Owner may terminate the Contract if the Contractor:
 - a. persistently or repeatedly refuses or fails, to supply enough properly skilled workers and/or proper equipment and/or materials, or failure to adhere to the construction schedule established as adjusted from time to time pursuant to the terms of this Agreement.
 - b. fails to make payment to Suppliers and/or Subcontractors for equipment, materials or labor in accordance with the respective agreements between the Contractor and the Suppliers and/or Subcontractors;
 - c. disregards laws, ordinance, or rules, regulations or orders of a public authority having jurisdiction; or
 - d. otherwise is guilty of substantial breach of a provision of the Contract Documents.

2. When any of the above reasons exist, the Owner, upon certification by the Consultant that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:
 - a. take possession of the Project site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
 - b. accepts assignment of subcontracts; and
 - c. finish the Work by whatever reasonable method the Owner may deem expedient.

Prior to the Contractor leaving the Project site, the Contractor shall secure the site and leave it in a safe condition.

3. When the Owner terminates the Contract, the Contractor shall not be entitled to receive any further payment until the Work is finished.

4. All damages, costs and charges incurred by Owner, including compensation for the Consultant's Services, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to Contractor. In case the damages and expenses so incurred by Owner shall exceed the unpaid balance, then Contractor shall be liable and shall pay to Owner the amount of said excess. The amount to be paid to the Owner shall be certified by the Consultant, upon application, and this obligation for payment shall survive termination of this Contract.

5. If after notice of termination of Contractor's right to proceed, it is determined for any reason that Contractor was not in default, the rights and obligations of Owner and Contractor shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth below.

B. TERMINATION BY THE OWNER FOR CONVENIENCE

This Contract may be terminated for convenience by Owner upon ten (10) days written notice to Contractor, and the Contractor's surety, if any (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, Contractor shall be paid for all acceptable work executed and expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by Contractor relating to commitments which had become firm prior to the termination. No payment shall be made for work/services or profit for such work/services, which have not been performed.

C. RECEIPT OF NOTICE OF TERMINATION

Upon receipt of Notice of Termination pursuant to Sections 14.2 A or B above, Contractor shall deliver or otherwise make available to Owner all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract whether completed or in process.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

- A. The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.
- B. An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent;
 1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
 2. that an equitable adjustment is made or denied under another provision of this Contract.
- C. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

END OF GENERAL CONDITIONS

Document 00800

SUPPLEMENTAL CONDITIONS

ARTICLE 1
AUDIO/VIDEO PRE-CONSTRUCTION RECORD

PART 1 - GENERAL

1.01 DESCRIPTION

- A. This shall be applicable for all roadway construction projects. The Contractor shall provide a continuous color audio/video CD of the entire length of the proposed project prior to construction. The Contractor shall furnish to the Engineer and the Owner two (2) copies each of the CD, which becomes a project record document.

1.02 RELATED SECTIONS

- A. As applicable.

1.03 SCHEDULE REQUIRED

- A. Video recordings shall not be made more than 30 days prior to construction. No construction shall begin prior to review and approval of the digital files by the Engineer and the Owner. Digital files not conforming to the Specifications shall be resubmitted at no additional charge.

PART 2 - PRODUCTS

- A. The finished product shall be a bright, sharp, clear picture free of distortion and show in sufficient detail acceptable to the Engineer.
- B. The video shall be of the digital files format.

PART 3 - EXECUTION

- A. The video recording shall show all surface features located within the construction zone. These features shall include, but not be limited to, roadways, sidewalks, outside of houses (front and sides), driveways, culverts, walls, fences and landscaping.
- B. Where station numbering is used, coverage shall begin at the lowest station number and be continuous until the highest station number is reached. Otherwise, the entire length of the project shall be documented including each plan sheet.

ARTICLE 2
CONSTRUCTION PHOTOGRAPHS

PART 1 - GENERAL

1.01 DESCRIPTION

- A. Employ competent photographer or equal to take construction record photographs for preconstruction conditions, periodically during course of Work, and post-construction.

1.02 RELATED SECTIONS

- A. Application for Payment
- B. Project Record Documents
- C. Other Sections as applicable.

1.03 PHOTOGRAPHY REQUIRED

- A. Provide photographs taken on cutoff date for each scheduled Application for Payment.
- B. View and Quantities Required:
 - 1. Take the minimum number of photographs of the site (and adjacent property if applicable) at preconstruction, monthly, and post-construction as needed to capture work.
 - 2. Aerial photography shall be acceptable in addition to ground level exposures for items out of sight of aerial photography.
- C. Negatives (if applicable):
 - 1. Remain property of photographer
 - 2. Require that photographer maintain negatives for a period of two years from Date of Completion of entire project.
 - 3. Photographer shall agree to furnish additional prints to Owner and the Engineer at commercial rates applicable at time of purchase.

1.04 COSTS OF PHOTOGRAPHER

- A. Contractor shall pay costs for specified photography and prints.

1. Parties requiring additional photography or prints will pay photographer directly.

PART 2 - PRODUCTS

2.01 PRINTS

- A. Digital Images: Provide images in JPG format, produced by a digital camera with minimum sensor size of 8 megapixels, and at an image resolution of not less than 3200 by 2400 pixels.
- B. Identify in metadata unless otherwise approved.
 - 1. Name of Project
 - 2. Orientation of View
 - 3. Date and time of exposure
 - 4. Name and address of photographer
 - 5. Photographer's numbered identification of

exposure. PART 3 - PRODUCTS

3.01 TECHNIQUE

- A. Factual presentation
- B. Correct exposure and focus
 - 1. High resolution and sharpness
 - 2. Maximum depth-of-field
 - 3. Minimum distortion

3.02 VIEWS REQUIRED

- A. Photograph from locations to adequately illustrate condition of construction and state of progress. To include the following as applicable.
 - 1. At successive periods of photography, take at least one photograph from the same overall view as previously.
 - 2. Provide aerial photograph with each monthly application for payment.
 - 3. Consult with the Engineer at each period of photography for instructions concerning views required.
 - 4. To include the following, as applicable
 - a) Existing site prior to the start of Contractor operations.
 - b) Site clearing
 - c) Excavations

- d) Foundations
- e) Utilities
- f) Structural framing
- g) Enclosure of building
- h) Landscaping
- i) Substantial and Final Completion of a major phase or component of work.

3.03 DELIVERY OF PRINTS/Files

- A. Deliver a digital file and a pdf file of each view with each Application for Payment with transmittal letter.

END OF SUPPLEMENTAL CONDITIONS

DOCUMENT 00900

ADDENDUM

END OF ADDENDUM

Document 00910

THIS INSTRUMENT PREPARED BY:

Jamie A. Cole, Esq.
Weiss Serota Helfman Cole & Bierman, P.L.
200 East Broward Boulevard, Suite 1900
Fort Lauderdale, FL 33301

RETURN EXECUTED ORIGINAL TO:

City of Weston Public Works Services Center
2599 South Post Road
Weston, FL 33327

City of Weston

WARRANTY BOND

KNOW ALL MEN BY THESE PRESENTS: That _____

Address _____

As Principals, and _____

a corporation existing under the laws of the State of _____, and having complied with all of the requirements of the laws of the State of Florida regulating the admission of such corporation to transact business in this State, as Surety, are held and firmly bound unto the City of Weston of Broward County, a political subdivision of the State of Florida, in the sum of Dollars(\$ _____), lawful money of the United States of America, for which sum to be paid to said City of Weston as obligee, the said Principal and the said Surety do bind themselves, their heirs, executors, administrators, successors, or assigns respectively, as the case may be, jointly and severally by these presents.

WHEREAS, the City requires a Warranty Bond ("Bond") in the amount of ten percent (10%) of the actual cost of the Work be posted upon acceptance of said Work by the City ("Acceptance"); and

WHEREAS, in compliance with the Bond requirements, the Principal is required to furnish a good and sufficient bond in a surety company licensed to do business in the State of Florida conditioned upon the correction of all insufficiencies in design, workmanship and/or materials which are found within one year of the date of the Acceptance of the Work. The date of Acceptance being _____.

NOW THEREFORE, the condition of this obligation is such that if the Principal, its successors, legal representatives or assigns shall have paid all claims for the cost of correcting all insufficiencies in design, workmanship and/or materials discovered within one year of the date of Acceptance of the Work, then this obligation shall be void; else to continue in full force and effect.

Prior to the end of 365 calendar days following the Acceptance of the Work warranted by this bond, the City Manager, or his/her designee shall inspect them for final release. If the investigation reveals any insufficiencies, the Principal shall be notified in writing, that the Work is unacceptable.

The Principal and the Surety, jointly and severally, agree that the City of Weston shall have the right to correct insufficiencies in design, workmanship and/or materials in the event the Principal should fail or refuse so to do within ninety (90) days after written notice by the City Manager or his/her designee and, pursuant to public advertisement and receipt and acceptance of bids, as may be required by law cause said insufficiencies in design, workmanship and/or materials to be corrected. In such case, the Principal and Surety shall be jointly and severally liable hereunder to pay to and indemnify the City upon the correction of said insufficiencies in design, workmanship and/or materials, the final total cost thereof including but not limited to engineering, legal and contingent costs together with any damage, direct or consequential, which City of Weston may sustain on account of the failure of the Principal to comply with all of the requirements hereof.

In the event the City receives a notice of cancellation of this Surety Bond and a substitute form of security is not received by the City sixty (60) calendar days prior to the cancellation date, the PRINCIPAL shall be deemed in default and the provisions herein shall apply.

Upon recommendation by the City Manager or his/her designee for final acceptance and upon compliance by Principal with applicable conditions, as hereinabove stated, the City Manager or his/her designee will then recommend to the City the release of this reduced bond.

IN WITNESS WHEREOF the above bounded parties have executed this instrument by affixing their corporate names and seals hereto and causing their authorized representatives to sign these presents, pursuant to the authority of their governing bodies on this _____ day of _____, _____.

PRINCIPAL

ATTEST:

Secretary

President of PRINCIPAL
(Seal)

WITNESSES:

Print Name:

Print Name:

SURETY

Signed, Sealed and Delivered
In Presence of:

By: _____
As Surety

Print Name:

Print Name:

END OF DOCUMENT 00910

Document 00920

CERTIFICATION OF PAYMENT AND
PAY ESTIMATE APPROVAL FORM

PROJECT: _____

PAY ESTIMATE # _____

CONTRACTOR: [YOUR COMPANY NAME]

DATE: _____
(last day of month)

OWNER: CITY OF WESTON

CITY BID NO. 2024-01

- 1. ORIGINAL CONTRACT SUM _____
- 2. Net Change by Change Order _____
- 3. CONTRACT SUM TO DATE (Line 1 and 2) _____
- 4. TOTAL COMPLETED AND STORED TO DATE _____
- 5. RETAINAGE (5%) _____
- 6. TOTAL EARNED LESS RETAINAGE _____
(Line 4 less Line 5 Total)
- 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT _____
(Line 6 from prior Certificate)
- 8. AMOUNT DUE THIS APPLICATION _____
- 9. BALANCE TO FINISH, PLUS RETAINAGE _____
(Line 3 less Line 6)

CONTRACTOR'S CERTIFICATION

As the agent for the contractor, I, the undersigned hereby certify that this is a true and correct statement of work performed and materials delivered. I further certify that the contractor has good title of all materials delivered under this Partial Payment Estimate and there are no vendors' claims, mechanics' claims, or other claims or rights to claims against this job, and that all previous partial payments received under this contract have been applied to discharge in full all of the Contractor's obligations reflected in prior Partial Payment requests. I further certify that all work covered by this Certification of Payment is in accordance with the Contract Documents and not defective as that term is defined in the Contract.

Company Name

Signature

Print Name/Title

Date

In accordance with the contract, the undersigned approves the pay estimate submitted by the Contractor, subject to corrections, as noted on the Pay Estimate Form in the amount due as shown above.

APPROVED: Owner Representative

APPROVED: CITY OF WESTON

By: _____
Owner Representative

By: _____

Document 00930
CERTIFICATION OF PAYMENT AND PARTIAL RELEASE OF CLAIM

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned (name of individual) _____ as (officer w/corp.) _____ of (name of contractor) _____ for and in consideration of the payment of the sum of \$_____, receipt of which is hereby acknowledged, does hereby waive, release, remise and relinquish the undersigned's right to demand, impress or impose a claim or claims in the sum of \$_____ for materials and/or labor furnished up to the ____ day of _____, ____, on the following described project:

This is a Partial Release of Claim by the undersigned for materials and/or labor furnished up to the date mentioned and shall not operate to waive any claim of the undersigned for any sum in excess of the said sum mentioned, nor for any materials and/or labor furnished after the date mentioned, as this is only a partial release of claim.

Although, the undersigned further acknowledges, that the undersigned may not impose a lien or liens on City owned property, to the extent the undersigned may have such lien rights, the undersigned hereby waives, releases, remises and relinquishes such lien rights.

IN WITNESS WHEREOF, I, _____ have hereunto set my hand and seal this ____ day of _____, _____.

WITNESSES:

Signed

Signed

Witness' name printed

Contractor's name printed

Signed

Witness' name printed

STATE OF FLORIDA)
COUNTY OF BROWARD)

Sworn to (or affirmed) and subscribed before me by means of ____ physical presence or ____ online notarization, this ____ day of _____, 20__, by

(Name of person making statement)

Personally known to me ____ or has produced Identification ____, type of identification produced_____.

(NOTARY SEAL HERE)

SIGNATURE OF NOTARY PUBLIC

PRINT, TYPE/STAMP NAME OF NOTARY

Document 00940

CERTIFICATION OF PAYMENT AND FINAL RELEASE OF CLAIM

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned (name of individual) _____ as (officer w/corp.) _____ of (name of contractor) _____ for and in consideration of the payment of the sum of \$ _____, receipt of which is hereby acknowledged, hereby releases and relinquishes any and all right to any claim or claim rights for work done, material(s) furnished, labor performed and/or for any incidental expense against the following described project:

thereon or in otherwise improving said project situated as described above.

I also certify that all persons, firms or corporations doing work upon, furnishing materials, supplies and/or labor for said improvements at the premises described above have been paid in full and that there are no unpaid claimants in connection therewith.

I further certify that all taxes imposed by Chapter 212, Florida Statutes (Sales and Use Tax Act), as amended, have been paid and discharged.

Although, the undersigned further acknowledges, that the undersigned may not impose a lien or liens on City owned property, to the extent the undersigned may have such lien rights, the undersigned hereby waives, releases, remises and relinquishes such lien rights.

IN WITNESS WHEREOF, I, _____ have hereunto set my hand and seal this _____ day of _____, _____.

WITNESSES:

Signed

Signed

Witness' name printed

Contractor's name printed

Signed

Witness' name printed

STATE OF FLORIDA)
COUNTY OF BROWARD)

Sworn to (or affirmed) and subscribed before me by means of ____ physical presence or ____ online
notarization, this ____ day of _____, 20____, by

(Name of person making statement)

Personally known to me ____ or has produced Identification ____, type of identification
produced_____.

(NOTARY SEAL HERE)

SIGNATURE OF NOTARY PUBLIC

PRINT, TYPE/STAMP NAME OF NOTARY

**CONSENT OF
SURETY COMPANY
TO PARTIAL OR FINAL PAYMENT**

OWNER _____
ARCHITECT _____
CONTRACTOR _____
SURETY _____
OTHER _____

Bond _____

PROJECT: Pavilion Replacements – Library Park
(Name, Address) 4255 Bonaventure Blvd., Weston, FL 33332 City Bid No. 2024-01

TO: City of Weston
17200 Royal Palm Boulevard
Weston, FL 33326

CONTRACT FOR:

CONTRACTOR: _____

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the (here insert name and address of Surety Company)

,SURETY COMPANY

on bond of (here insert name and address of contractor)

,CONTRACTOR

hereby approves of the _____ in the amount of \$ _____ partial/final payment to the Contractor, and agrees that payment to the Contractor shall not relieve the Surety Company of any of it's obligations to

City of Weston
17200 Royal Palm Boulevard
Weston, FL 33326

, OWNER

as set forth in said Company's bond.

IN WITNESS WHEREOF,
the Surety Company has hereunto set it's hand this ____ day of _____, _____

Surety Company

Signature of Authorized Representative

Title

DOCUMENT 00960

PROJECT CLOSEOUT

PART 1 – GENERAL

1.01 RELATED REQUIREMENTS

- A. General provisions of Contract, including General and Supplementary Conditions.
- B. Warranty and bond submittal.
- C. Closeout submittals, warranties and bonds required for specific products of work.
- D. Section 00970

1.02 SECTION INCLUDES

- A. Administrative and procedural requirements for project closeout.
 - 1. Inspection procedures.
 - 2. Project record document submittal.
 - 3. Final cleaning.

1.03 SUBSTANTIAL COMPLETION

- A. Before requesting inspection for certification of Substantial Completion, complete the following. List exceptions in the request.
 - 1. If 100 percent completion cannot be shown, include a list of incomplete items, the value of incomplete construction, and reasons the Work is not complete.
 - 2. Advise City of pending insurance change-over requirements.
 - 3. Submit specific warranties, workmanship bonds, maintenance agreements, final certifications and similar documents.
 - 4. Obtain and submit releases enabling the City unrestricted use of the Work and access to services and utilities; include occupancy permits, operating certificates, and similar releases.
 - 5. Submit record drawings, maintenance manuals, and similar final record information.
 - 6. Complete start-up testing of systems, and instruction of the City's operating and maintenance personnel. Discontinue or change over and remove temporary facilities from the site, along with construction tools, mock-ups, and similar elements.

- B. When the Contractor considers the Work to be substantially complete, he shall submit a written notice to the Engineer that the Work, or designated portion of the Work, is complete and ready for inspection.
- C. Within a reasonable time of receipt of a request for inspection, the Engineer will either proceed with inspection or advise the Contractor of unfulfilled requirements. When the Engineer and City concur that the Work, or designated portion of the Work, is substantially complete, the Engineer will prepare the Certificate of Substantial Completion following inspection.
- D. Should the Engineer determine that the Work is not substantially complete, he will advise the Contractor of construction that must be completed or corrected before the certificate will be issued.
 - 1. The Engineer will repeat inspection when requested and assured that the Work has been substantially completed. Should the Engineer determine that the Work is not substantially complete, he will advise the Contractor of construction that must be completed or corrected before the certificate will be issued. The contractor must pay the engineer their hourly rate for any further inspections.
 - 2. Results of the completed inspection will form the basis of requirements for final acceptance.

1.04 FINAL COMPLETION

- A. When Contractor considers the Work to be complete, Contractor shall submit written certification to the Engineer that the Work is completed and ready for final inspection. Include the following:
 - 1. Submit the final payment request with releases and supporting documentation not previously submitted and accepted. Include certificates of insurance for products and completed operations where required.
 - 2. Submit an updated final statement, accounting for final additional changes to the Contract Sum.
 - 3. Submit a certified copy of the Engineer's final inspection list of items to be completed or corrected, stating that each item has been completed or otherwise resolved for acceptance, the list has been endorsed and dated by the Engineer.
 - 4. Submit final meter readings for utilities, a measured record of stored fuel, and similar data as of the date of Substantial Completion, or when the City took possession of and responsibility for corresponding elements of the Work.
 - 5. Submit consent of surety to final payment.
 - 6. Submit evidence of final, continuing insurance coverage complying with insurance requirements.

- B. The Engineer will inspect the Work upon receipt of notice that the Work, including inspection list items from earlier inspections, has been completed, except items whose completion has been delayed because of circumstances acceptable to the Engineer.
 - 1. Upon completion of inspection, the Engineer will prepare a certificate of final acceptance, or advise the Contractor of Work that is incomplete, or of obligations that have not been fulfilled but are required for final acceptance.
 - 2. If necessary, the re-inspection process will be repeated.

1.05 RECORD DOCUMENT SUBMITTALS

- A. Maintain at the site one complete set of record documents; protect from deterioration and loss in a secure, fire-resistive location.
 - 1. Provide access to record documents for the Engineer's reference during normal working hours.
 - 2. Label each document "PROJECT RECORD" in 2-inch high printed letters.
 - 3. Do not use for construction purposes.
- B. Record Drawings: Maintain a clean, undamaged set of blue or black line white-prints of Contract Drawings and Shop Drawings. Mark the set to show the actual installation where the installation varies substantially from the Work as originally shown. Mark whichever drawing is most capable of showing conditions fully and accurately; where Shop Drawings are used, record a cross-reference at the corresponding location on the Contract Drawings. Give particular attention to concealed elements that would be difficult to measure and record at a later date.
 - 1. Mark record sets with red erasable pencil; use other colors to distinguish between variations in separate categories of the Work.
 - 2. Mark new information that was not shown on Contract Drawings or Shop Drawings.
 - 3. Note related Change Order numbers where applicable.
 - 4. Organize record drawing sheets into manageable sets, bind with durable paper cover sheets, and print suitable titles, dates and other identification on the cover of each set.

The record drawings shall correctly and accurately show all changes from the Contract Documents made during construction and shall reflect surveyed information which shall be verified and certified by an independent Professional Land Surveyor registered in the State of Florida. The drawings shall be neat and legible. Show all elevations and horizontal control of all pipes and structures, as defined below:

- C. Record Drawings Submittal Requirements: Record drawings to be submitted shall consist of:
 - 1. Three sets of signed and sealed sets of prints.
 - 2. Electronic file in AutoCAD version 13 or later.
 - 3. Electronic file in PDF.

- D. Record Specifications: Maintain one complete copy of the Project Manual, including addenda, and one copy of other written construction documents such as Change Orders and modifications issued in printed form during construction.
 - 1. Mark these documents to show substantial variations in actual Work performed in comparison with the text of the Specifications and modifications.
 - 2. Give particular attention to substitutions, selection of options and similar information on elements that are concealed or cannot otherwise be readily discerned later by direct observation.
 - 3. Note related record drawing information and Product Data.

- E. Record Product Data: Maintain one copy of each Product Data submittal.
 - 1. Mark these documents to show significant variations in actual Work performed in comparison with information submitted. Include variations in products delivered to the site, and from the manufacturer's installation instructions and recommendations.
 - 2. Give particular attention to concealed products and portions of the work which cannot otherwise be readily discerned later by direct observation.
 - 3. Note related Change Orders and mark-up of record drawings and Specifications.

- F. Record Sample Submitted: Immediately prior to the date or dates of Substantial Completion, the Contractor will meet at the site with the Engineer and the City to determine which of the submitted Samples that have been maintained during progress of the Work are to be transmitted to the City for record purposes. Comply with delivery to the City's Sample storage area.

- G. Miscellaneous Record Submittals: Refer to other Specification Sections for requirements of miscellaneous record-keeping and submittals in connection with actual performance of the Work.

- H. At Contract closeout, deliver one copy of Record Documents to Engineer for City. Accompany submittal with transmittal letter in duplicate containing the following information:
1. Date.
 2. Project title and number.
 3. Contractor's name and address.
 4. Title and number of each Record Document.
 5. Signature of Contractor or authorized representative.

1.06 REINSPECTION FEES

- A. Should the Engineer perform re-inspections or re-reviews due to failure to comply with the claims of status of completion made by the Contractor:
1. Contractor will compensate the City for such additional services.
 2. City will deduct the amount of such compensation from the final payment to the Contractor.

PART 2 - PRODUCTS

PART 3 – EXECUTION

3.01 FINAL CLEANING

- A. Remove temporary protection and facilities installed for protection of the Work during construction.
- B. Comply with regulations of authorities having jurisdiction and safety standards for cleaning. Do not burn waste materials. Do not bury debris or excess materials on the City's property. Do not discharge volatile, harmful or dangerous materials into drainage systems. Remove waste materials from the site and dispose of in a lawful manner.
- C. Where extra materials of value remaining after completion of associated Work have become the City's property, arrange for disposition of these materials as directed.

END OF SECTION

DOCUMENT 00970

CITY OF WESTON - CLOSEOUT PACKAGE CHECKLIST

1. Three (3) sets of Record Drawing hard copy prints and one (1) pdf files showing the original design and "As-built" data, signed and sealed.
2. Two (2) copies of all applicable test results bacteriologic results and density testing results.
3. One computer "Record Drawing" construction drawing files on CD (AUTOCAD version 13.0 or later).
4. Consent of surety to final payment.
5. One (1) original and one (1) copy of Releases of Liens and No-Lien Affidavits.
6. One (1) original and one (1) copy of Warranty Bond