

Viera East
Community Development District
Meeting Agenda

Thursday
December 2, 2021
7:00 PM

Multi-Purpose Room, Faith Lutheran Church
5550 Faith Drive
Viera, FL 32955

Board of Supervisors Meeting

1. Roll Call
2. Pledge of Allegiance
3. Public Comment Period
4. Consideration of Construction Services Agreement with Landirr, Inc.
5. Supervisor's Requests
6. Adjournment

Workshop Meeting

1. Roll Call
2. Playground/Dog Park Update
3. General Manager's Report
4. Lifestyle/Marketing Report
5. Supervisor's Requests
6. Adjournment

AIA® Document A104™ - 2021

Standard Abbreviated Form of Agreement Between Owner and Contractor (Modified)

AGREEMENT made as of the 2nd day of December in the year «Two Thousand Twenty One»

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

«» Viera East Community Development District
«» 219 East Livingston Street, Orlando, Florida 32801

and the Contractor:

(Name, legal status, address and other information)

«» Landirr, Inc.
«» 202 N Laurel Ave, Sanford, Florida 32771

for the following Project:

(Name, location and detailed description)

«» Construction Services for Golf Course Renovations at the Viera East Golf Club
« »

The Engineer:

(Name, legal status, address and other information)

«» Robb & Taylor Engineering Solutions, Inc.
«» 4685 Hidden Lakes Place, Melbourne, Florida 32934

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

TABLE OF ARTICLES

- 1 THE WORK OF THIS CONTRACT
- 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 3 CONTRACT SUM
- 4 PAYMENT
- 5 DISPUTE RESOLUTION
- 6 ENUMERATION OF CONTRACT DOCUMENTS
- 7 GENERAL PROVISIONS
- 8 OWNER
- 9 CONTRACTOR
- 10 ENGINEER
- 11 SUBCONTRACTORS
- 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 13 CHANGES IN THE WORK
- 14 TIME
- 15 PAYMENTS AND COMPLETION
- 16 PROTECTION OF PERSONS AND PROPERTY
- 17 INSURANCE AND BONDS
- 18 CORRECTION OF WORK
- 19 MISCELLANEOUS PROVISIONS
- 20 TERMINATION OF THE CONTRACT
- 21 CLAIMS AND DISPUTES

EXHIBIT A DETERMINATION OF THE COST OF THE WORK – NOT USED

ARTICLE 1 THE WORK OF THIS CONTRACT

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

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

[<< 12/2/21 >>] The date of this Agreement.

[<< X >>] A date set forth in a notice to proceed issued by the Owner.

[<< >>] Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

<<>>

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

[X] Not later than **one hundred and eighty** (180) calendar days from the date of commencement of the Work.

[] By the following date: []

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

[X] Stipulated Sum, in accordance with Section 3.2 below

[] Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

[] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be [(\$ Toro - \$2,340,000; Rain Bird - \$2,222,300)], subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

see Exhibit C

§ 3.2.2 Unit prices, if any:

(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ 3.2.3 Allowances, if any, included in the stipulated sum:

(Identify each allowance.)

Item	Price
See Exhibit C	\$

§ 3.2.4 For Change Order Work or Construction Change Directives as to which unit pricing in accordance with the Agreement is not the agreed upon pricing method, amounts payable or deductible, as the case may be, for combined overhead and profit shall be Percent (%) of the aggregate net change in the cost of the Work attributable to changes.

§ 3.3 Intentionally deleted

§ 3.3.1 Intentionally deleted.

§ 3.3.2 Intentionally deleted.

§ 3.4 Intentionally deleted.

§ 3.4.1 Intentionally deleted.

§ 3.4.2 Intentionally deleted.

§ 3.4.3 Intentionally deleted.

§ 3.4.3.2 Intentionally deleted.

§ 3.4.3.3 Intentionally deleted.

§ 3.4.3.4 Intentionally deleted.

§ 3.4.3.5 Intentionally deleted.

§ 3.4.3.6 Intentionally deleted.

§ 3.4.3.7 Intentionally deleted.

§ 3.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

The Contractor acknowledges and agrees that the Owner will suffer damages if the Contractor does not achieve Substantial Completion of the Work within the Contract Time. The specific damages for delay in timely achieving Substantial Completion of the Work within the Contract Time are difficult to determine at this time but the parties agree that the liquidated damages for delayed Substantial Completion specified in this Section 3.5 represent a reasonable estimate of the damages the Owner will incur for each day of delay beyond the Contract Time and bear a reasonable relationship to the Owner's risk of loss. Accordingly, as liquidated damages, and not as a penalty, the Contractor shall pay to the Owner liquidated damages in the daily amount of FIVE HUNDRED AND 00/100 Dollars (\$ 500.00) for each day of delay in achieving Substantial Completion of the Work beyond the Contract Time. The Owner may deduct liquidated damages prescribed in this Section 3.5 from any unpaid amounts then or thereafter due the Contractor under the Contract Documents. Any liquidated damages not so deducted shall be payable to the Owner by the Contractor upon demand by the Owner plus interest from the date of demand at the rate specified in Section 4.1.5 of this Agreement. It is further mutually understood and agreed that the Owner's assessment of liquidated damages for delays is intended to compensate the Owner solely for the Contractor's failure to timely achieve Substantial Completion of the Work and shall not release the Contractor from liability from any other breach of the requirements of the Contract Documents. If the liquidated damages set forth in the Contract are determined by a court or arbitrator of competent jurisdiction to be unenforceable for any reason, then the Owner instead shall be entitled to recover those actual delay damages that it sustained as a result of the Contractor's failure

to timely achieve Substantial Completion of the Work. If the Contractor disputes any liquidated damages to which the Owner asserts it is entitled, the Contractor may make a Claim in accordance with the terms of the Contract.

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment to be submitted on AIA Form G702/703 or in such other format as may be approved in writing by the Owner and all other required supporting documentation and information submitted to the Owner and the Engineer by the Contractor and Certificates for Payment issued by the Engineer, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 4.1.3 Provided that an Application for Payment is received by the Owner not later than the last day of a month for which payment is requested, the Owner shall make payment of the certified amount to the Contractor not later than the 30th day of the same month. If an Application for Payment or any required backup is received by the Owner after the date fixed above, payment shall be made by the Owner not later than thirty (30) calendar days after the Owner receives the Application for Payment and all required backup.

(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.3.1 The Contractor shall submit to the Owner before the first Application for Payment, all certificates or policies of insurance required by the Contract Documents and a listing of all Subcontractors (awarded at that time). Additionally, the Contractor must update its list of Subcontractors and suppliers on a monthly basis and deliver it to the Owner and the Engineer with the Contractor's Applications for Payment.

§ 4.1.3.2 In addition to other required items, as a strict condition precedent to the Owner's obligation to make payment pursuant to an Application for Payment, the Contractor shall submit, all in form and substance reasonably satisfactory to the Owner and in compliance with applicable statutes of the State of Florida: (i) a duly executed and notarized partial release of lien from the Contractor and every Subcontractor, supplier and laborer under Contractor of every tier potentially having lien rights for labor, materials, equipment, and any other items and services furnished for the Project, in the form attached hereto as **Exhibit D1**, effective through the end of the period for which payment is sought in the Contractor's current Application for Payment; and (ii) such other information, documentation, and materials as the Owner may require.

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

10% of all items pending satisfaction of all conditions to final payment. Before final payment, the Owner, in its sole and absolute discretion, may make to the Contractor payment in full, including release of applicable retainage, for a particular Subcontractor's Work that is fully and satisfactorily completed, provided that the Contractor and Subcontractor provide a satisfactory complete release of all claims for such Work and provided that both have complied with all requirements for final payment in accordance with the Contract Documents as to such Subcontractor's Work. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (i) any of the Owner's rights to retainage in connection with other payments to the Contractor or (ii) any other right or remedy the Owner has under the Contract Documents, at law or in equity.

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract, including completion of all punch list items and final cleanup and restoration (including removal of all excess materials, rock, sand, paving, and miscellaneous debris, supplies, equipment, and trailers), except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price;
- .3 a final Certificate for Payment has been issued by the Engineer in accordance with Section 15.7.1.
- .4 the Contractor has delivered to the Owner final, fully consolidated, accurate and legible record Drawings in PDF format (or such other format as may be acceptable to the Owner);
- .5 the Contractor has delivered to the Owner a complete list of Subcontractors and principal suppliers on the Project, including addresses and telephone numbers certified by an officer of the Contractor as complete, true and accurate;
- .6 the Contractor has delivered to the Owner a duly-executed and notarized Final Payment Affidavit in statutory form showing all lienors have been paid in full;
- .7 the Contractor has submitted to the Owner a Final Release and Waiver of Lien in the form attached hereto as **Exhibit D2** completed and duly-executed before a notary by the Contractor and every Subcontractor, supplier and laborer of every tier under Contractor potentially having lien rights for labor, materials, equipment, and any other items and services furnished for the Project;
- .8 all warranties and guarantees required under or pursuant to the Contract Documents have been assembled and delivered by the Contractor to the Owner; and
- .9 the Owner has received any and all other documentation required by the Contract.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the completion or satisfaction of all conditions precedent to final payment set forth above in Section 4.2.1.

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Section 21.6 of this Agreement

Litigation in a court of competent jurisdiction

Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.

§ 5.2 WAIVER OF JURY TRIAL

To the extent allowed by applicable laws, the Owner and the Contractor expressly covenant and agree to waive the right to trial by jury in connection with any litigation or judicial proceeding related to or concerning, directly or indirectly, this Agreement, the Work, or the conduct, omission, action, obligation, duty, right benefit, privilege or liability of a party. This waiver of right to trial by jury is separately given and is knowingly, intentionally and voluntarily made by the parties, and both acknowledge that separate and good and valuable consideration has been provided by each for this waiver. The parties have had an opportunity to seek legal counsel concerning this waiver. This waiver is intended to and does encompass each instance and each issue as to which the right to a jury trial would otherwise accrue. The parties further certify and represent to each other that no employee, representative or agent of the Contractor or the Owner (including their respective counsel) has represented, expressly or otherwise, to the Contractor or the Owner or to any agent or representative of the Contractor or the Owner (including their

respective counsel) that they will not seek to enforce this waiver of right to jury trial. This waiver shall apply to this Agreement and any future amendments, supplements or modifications hereto.

§ 5.3 CHAPTER 558 OPT-OUT

THE PARTIES EXPRESSLY AGREE THAT THE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES, SHALL NOT APPLY TO THIS AGREEMENT OR ANY DISPUTE RELATING TO IT OR THE PROJECT.

§ 5.4 ATTORNEYS' FEES

In any suit, action, or other proceeding, including trial, arbitration or bankruptcy, arising out of or in any manner relating to this Agreement or the Contract Documents, including: (a) the enforcement or interpretation of either party's rights or obligations under this Agreement or the Contract Documents, whether in contract, tort, or both, or (b) the declaration of any rights or obligations under this Agreement or the Contract Documents, the prevailing party, as determined by the court or arbitrator, shall be entitled to recover its reasonable attorneys' fees and legal costs from the losing party.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

N/A

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 6.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
See Exhibit B			

§ 6.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
See Exhibit B		

§ 6.1.6 The Addenda, if any:

- [Community Development District Provisions Addenda](#)
- [Maintenance Bond Form – Contractor to use provisions and forms as required and approved by Brevard County.](#)

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 Other Exhibits:

(Check all boxes that apply.)

- Exhibit A, Determination of the Cost of the Work.
- Exhibit D, Basin V Drainage Map.
- AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:

AIA Document A104™ - 2017 (formerly A107™ - 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This draft was produced by AIA software at 18:28:50 ET on 04/19/2020 under Order No. 8042045140 which expires on 02/17/2021, and is not for resale.

(Insert the date of the E204-2017 incorporated into this Agreement.)

[] The Sustainability Plan:

Title	Date	Pages

[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents.)

Exhibit A – NOT USED

Exhibit B – Drawings and Specifications

Exhibit C – Initial Schedule of Values

Exhibit D – Reference Material – Basin V Drainage Map

Exhibit D1 – Form of Waiver and Release of Lien - Progress Payment

Exhibit D2 – Form of Waiver and Release of Lien - Final

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Engineer. 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.2 The Contract

The Contract Documents form the “**Contract for Construction**” or the “**Contract**”. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. However, to the extent the Contractor has performed Work within the scope of this Agreement before execution of this Agreement all rights and liabilities of the parties for performance of the prior Work are merged and included within and shall be governed by the terms and conditions of this Agreement. All compensation paid for prior Work performed by the Contractor or its Subcontractors related to the Project is included in the Contract Sum and the Owner shall have no obligation or liability to the Contractor for prior work separate and apart from the terms and conditions of this Agreement. For the avoidance of doubt, no sums are due for any work, services, or material provided prior to execution of this Agreement. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.2.1 In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Modifications and (b) this Agreement, including the Exhibits. Except as otherwise provided, among categories of documents having the same order of precedence, the provision or requirement conferring the greatest benefit upon the Owner as determined by the Owner shall control and take precedence. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

§ 7.3 The Work

The term “**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 to construct the entire Work shown on the Drawings and Specifications and all Work that is reasonably inferable therefrom as being necessary to achieve the indicated results. The Work may constitute the whole or a part of the Project.

§ 7.4 Instruments of Service

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

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Engineer and the Engineer’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights, subject to rights of the Owner under its agreement with the Engineer. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner’s, Engineer’s or Engineer’s consultants’ reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Engineer and the Engineer’s consultants.

§ 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The Contractor shall be bound by protocols, if any, that the Owner and the Engineer agree to.

§ 7.7 Building Information Models Use and Reliance

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

§ 7.8 Severability

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

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, or reputable overnight delivery services, with proof of delivery, or by electronic transmission, sent to the intended addressee at the address set forth in the Agreement, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given upon receipt of refusal to accept delivery, or, in the case of electronic transmission, as of the date of the electronic transmission.

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

§ 7.10 Relationship of the Parties

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Engineer and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.2 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 repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is 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. The Owner shall incur no liability for delays occasioned by any stop work order issued in accordance with this Section.

§ 8.3 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, and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect and deduct the reasonable cost thereof, including the Owner's expenses and compensation for the Engineer's additional services made necessary thereby, plus markup of ten percent (10%), from the payment then or thereafter due the Contractor. The Engineer may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment, or the Owner may, pursuant to Section 15.4.3 withhold payment or recover from the Contractor, or offset for, payment previously made, in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Engineer's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate

and satisfy themselves as to the condition and limitations under which the Work is to be performed, including (i) the location, condition, layout, and nature of the Project site, existing improvements, and surrounding areas, (ii) anticipated labor supply and costs, and (iii) availability and cost of materials, tools, and equipment. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this or any other section or provision of this Agreement.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Engineer any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Engineer may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the design professionals engaged by the Owner, or the work installed by other contractors, is not guaranteed by the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Engineer any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Engineer may require.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 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 or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 9.3 Labor and Materials

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

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

§ 9.3.3 The Contractor may make a substitution only with the written consent of the Owner, after evaluation by the Engineer and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner and Engineer that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties

required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3. In addition to and not in lieu of the foregoing warranties, the Contractor hereby (a) assigns to the Owner (on a non-exclusive basis) any and all manufacturer's, supplier's, and Subcontractor's warranties relating to materials and equipment used in the Work, (b) agrees to perform the Work in such manner so as to preserve any and all such warranties, and (c) further agrees to deliver all documentation of such warranties to the Owner no later than at the time the Contractor submits its final Application for Payment.

§ 9.5 Taxes

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

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

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

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance. Allowance amounts, if any, shall be adjusted via Change Order or Construction Change Directive prior to final payment based on actual substantiated costs incurred.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Engineer's information a Contractor's construction schedule for the Work. The schedule shall be updated at appropriate intervals required by the conditions of the Work. The construction schedule and all updates thereto shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Engineer; provided, however, no such schedule update shall modify the Contract Time without the Owner's written consent.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Engineer and the Owner Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents or requested by the Engineer or the Owner in coordination with the Contractor's construction schedule and in such sequence as to allow the Engineer (and the Owner, at the Owner's election) reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Engineer that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Engineer will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Engineer will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Engineer's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Engineer will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

§ 9.10.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Only materials and equipment that are to be used directly in the Work itself shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored on the Project site from weather, theft, and damage is solely the responsibility of the Contractor. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 9.10.2 The Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of any areas and buildings adjacent to the site of the Work. The Contractor shall not permit any workers to use any existing facilities at the Project site, including elevators, lavatories, toilets, entrances, and parking areas other than those specifically agreed by the Owner in writing.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project.

§ 9.13 Access to Work

The Contractor shall provide the Owner, the Engineer, and other persons designated by the Owner with access to the Work in preparation and progress wherever located.

§ 9.14 Royalties, Patents and Copyrights

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

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend (at Owner's request with counsel reasonably acceptable to the Owner) and hold harmless the Owner, its members, managers, and affiliates, and the respective officers, directors, agents, employees, successors and assigns of any of them, as well as the Viera East Community Development District and its Board of Supervisors (collectively, "**Indemnitees**"), from and against any and all claims, liabilities, damages, losses, and expenses, including attorneys' fees (collectively, "**Indemnity**").

Claims"), arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death (the Contractor's employees included), or to injury to or destruction of tangible property (including loss of use), but only to the extent caused, in whole or in part, by the negligent, reckless or intentionally wrongful acts or omissions of the Contractor, or any of the Contractor's Subcontractors, suppliers, or agents of any tier or their respective employees, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified here under. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to an Indemnitee. The Owner and the Contractor acknowledge and agree that Section 725.06, Florida Statutes, does not require a monetary limitation on the extent of the indemnification provisions of this Section 9.15.1. If, notwithstanding this agreement, a monetary limitation on the extent of indemnification is deemed necessary to enforce any indemnification provision contained in the Contract, the specifications for the Project shall be deemed to include a monetary limitation on the extent of the indemnification required by said provision equal to the greater of, on a per occurrence basis: (a) two (2) times the Contract Sum, or (b) the amount of all deductibles and self-insured retentions applicable to the Contractor's insurance policy or policies applicable to such Indemnity Claim(s) plus the amount of insurance proceeds paid or payable under the Contractor's insurance policy or policies applicable to such Indemnity Claims, and the Contractor and the Owner expressly agree that this monetary limit bears a reasonable commercial relationship to the Contract. The Contractor's indemnification obligations under this Agreement, including those in this Section, shall be deemed to fully comply with Section 725.06, Florida Statutes, to the extent applicable, including any amendments thereto, in all respects. If any word, clause or provision of any of the indemnification provisions of this Agreement is determined not to be in compliance with Section 725.06, Florida Statutes, to the extent applicable, including any amendments thereto, it shall be deemed stricken and the remaining words, clauses, and provisions shall remain in full force and effect. To the greatest extent permitted by applicable laws, the Contractor waives for itself and its insurers any and all claims that the indemnification obligations under the Contract violate applicable laws.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 9.15.3 The duty of the Contractor to indemnify and hold harmless the indemnified parties includes the separate and independent duty to defend the indemnified parties, which duty arises immediately upon receipt by the Contractor of the tender of any indemnity claim from an indemnified party which under the written content of the claimant's description of its claim reasonably appears to be within Contractor's indemnification obligation. The Contractor's obligation to defend the indemnified parties shall be at Contractor's sole expense. The Contractor shall respond within fifteen (15) calendar days to the tender of any indemnity claim for defense and/or indemnity by an indemnified party, unless the indemnified party agrees in writing to an extension of this time. The defense provided to the indemnified parties by Contractor shall be by well qualified, adequately insured and experienced legal counsel reasonably acceptable to Owner. By proceeding to defend an indemnity claim, the Contractor shall not be deemed to have admitted to an obligation to provide indemnification and defense and the Contractor may provide a defense under a written reservation of rights.

ARTICLE 10 Engineer

§ 10.1 The Engineer will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Engineer issues the final Certificate for Payment. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 10.2 At the Owner's discretion, the duties of the Engineer described herein, other than those duties that require licensure as an architect under applicable laws, may be performed by the Owner or the Owner's representative (e.g., the role of reviewing and certifying Applications for Payment and approving Change Orders).

§ 10.3 The Engineer will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Engineer will not have control over, charge of, or

responsibility for the 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 rights and responsibilities under the Contract Documents.

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

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

§ 10.6 The Engineer shall promptly notify the Owner when it observes Work that does not conform to the Contract Documents and the Engineer may recommend to the Owner inspection or testing of the Work.

§ 10.7 The Engineer will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.8 The Engineer will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor, provided that requests by the Contractor for information or clarification must be in writing and indicate the specific Contract Documents in need of clarification and the nature of the clarification requested.

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

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Engineer of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Engineer has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall be in writing and shall (1) expressly identify the Owner as a third party beneficiary of the subcontract, (2) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Engineer, (3) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner, (4) incorporate the terms of this Agreement, (5) require that each of the Contractor's Subcontractors and materials suppliers incorporate the terms of this Agreement into their respective subcontracts and purchase orders related to the Project, (6) include the provision for waiver of trial by jury with respect to any and all claims arising out of the performance of any and all obligations under this Agreement and all subcontracts and purchase orders related to the Project, (7) conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee and shall not provide

for retainage of less than ten percent (10%) without the prior consent of the Owner. The Contractor shall promptly submit to the Owner a copy of each subcontract upon execution of same.

§ 11.4 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that: (i) assignment is effective only after termination of the Contract by the Owner and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and (ii) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract. Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of its right to take an assignment of such subcontract. Upon such assignment to the Owner under this Section 11.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 12.2 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 activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of a Separate Contractor's delays that delay the critical path of the Work, a Separate Contractor's improperly timed activities that delay the critical path of the Work caused by a Separate Contractor, or damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, and Contractor, and, if required by the Owner, the Engineer, or by written Construction Change Directive signed by the Owner and, if required by the Owner, Engineer. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive. Except as permitted in this Article 13 or Section 15.4.5, a change in the Contract Sum or Contract Time shall be accomplished only by a Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, shall be a basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided in the Contract Documents.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties in a Change Order signed by both the Contractor and the Owner or, in the case of a Construction Change Directive signed only by the Owner and, if required by the Owner, the Engineer, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit thereon at the rate specified in Section 3.2.4 unless the parties agree on another method for determining the cost or credit, and such adjustment of the Contract Sum shall be subject to preconditions and limitations of Article 14 and other applicable provisions of this Agreement. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Owner will make an interim determination of the amount of payment due for purposes of the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Contractor will prepare a Change Order. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time.

§ 13.3 The Engineer, with the Owner's written consent, 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. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Engineer and shall not proceed to implement the change in the Work.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides timely notice to the Owner and Engineer in accordance with Section 13.5 and, in any event, before conditions are disturbed.

§ 13.5 If the Contractor observes any circumstance that may, in its opinion, be a change in the scope of the Work that justifies a change to the Contract Sum or Contract Time or the Contractor otherwise becomes aware of the need for or desirability of a change in the Work, then the Contractor may submit a written Change Order Request ("COR") within ten (10) days after becoming aware of circumstance the Contractor believes constitutes a change, in a format acceptable to the Owner and Engineer, and must specify the reasons for such proposed change. The Contractor shall submit a written price proposal and any other required substantiating data within ten (10) days after delivery of the COR, including relevant circumstances and impacts on the schedule or within such later time, if any, agreed to in writing by the Owner. The Contractor may request additional compensation and/or time through a COR but not for instances that the Contractor knew or became aware of the grounds for the COR more than ten (10) days prior to the date the COR is submitted. Any such COR that is approved by the Owner will be incorporated in a Change Order or Construction Change Directive. The time periods in this Section 13.5 prevail over any conflicting time periods elsewhere in the Contract.

ARTICLE 14 TIME

§ 14.1 Time is of the essence in the performance of the Contractor's obligations under the Contract, including the Contract Time and any milestone deadlines. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

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

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the date established in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the critical path of the Work by: (a) labor disputes, fire, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or other causes beyond the Contractor's control that the Owner determines justify delay (collectively, "Force Majeure Events"); (b) an act or neglect of the Owner or Engineer, or of an employee of either, or of a Separate Contractor employed by the Owner; (c) changes ordered in the Work by the Owner; or (d) delay authorized by the Owner pending mediation or other dispute resolution proceedings, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension of time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that the delay will occur, (iii) delays the critical path of the Work and is of a duration not less than one (1) day, and (iv) written notice is provided to the Owner in writing within five (5) working days after the Contractor recognizes or discovers such delay. Notwithstanding anything to the contrary in the Contract Documents, an extension of the Contract Time, to the extent permitted under this Section 14.5, shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims whether or not such delays are foreseeable, unless a delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent such acts

continue after the Contractor furnishes the Owner with notice of such interference or a delay is caused by a Force Majeure Event exceeding fifteen (15) days in the aggregate (i.e. there shall be no increase in the Contract Sum for delays caused by Force Majeure Events unless the delays caused by Force Majeure Events exceed 15 days). In no event shall the Contractor be entitled to any compensation or recovery from the Owner in connection with any delay, for consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The extension of time provided for in Section 14.5 shall be the Contractor's sole remedy for any delay, with the exception of the additional cost provided in Section 14.6 below. To the extent the Contractor is entitled under the Contract Documents to an extension of time due to a delay, but the performance of the Work is independently suspended, delayed, or interrupted by a delay for which the Contractor is not entitled to an extension of time, the delay shall be deemed to be a "Concurrent Delay." In the case of a Concurrent Delay, the Contractor shall be entitled to an extension of the Contract Time but the Contractor shall not be entitled to any additional compensation whatsoever during the period of Concurrent Delay. The Contractor shall take all reasonable steps to mitigate the impact of any delays, however caused, regardless of whether the Contractor might otherwise be entitled to adjustment of the Contract Sum or Contract Time for such delays.

§ 14.6 The Owner shall not be obligated or liable to Contractor for, and Contractor expressly waives any claims against Owner on account of, any damages, costs or expenses of any nature whatsoever which Contractor, its Subcontractors of any tier or any other person may incur as a result of any delays, interference, suspensions, rescheduling, changes in sequence, congestion, disruptions or the like arising from or out of any act or omission of Owner, it being understood and agreed that Contractor's sole and exclusive remedy in such event will be an extension of the schedule as provided for in Section 14.5, but only in accordance with the provisions of Section 14.5, and, if applicable an adjustment to the Contract Sum in accordance with this Section 14.6. An adjustment in the Contract Sum shall only be allowed for delays caused by the acts of the Owner constituting active interference with the Contractor's performance of the Work that continue after the Owner's receipt of written notice from the Contractor or delays caused by Force Majeure Events exceeding fifteen (15) days in the aggregate (but not for Concurrent Delays) and such adjustment under or pursuant to this Section 14.6 shall be limited to the increase, if any, of direct costs incurred by the Contractor in performing the Work as a result of that portion of such delay or delays that cause the Contract Time to be increased. Without limitation, direct costs do not include and the Contractor waives claims relating to damages, delay damages or time-related costs or damages, including, without limitation: (1) profit on the additional costs beyond those as allowed elsewhere in the documents, (2) loss of anticipated profit, (3) indirect expenses, (4) impact costs, (5) loss of productivity, (6) inefficiency costs, (7) home-office overhead, (8) consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities and insolvency, and (9) legal fees, claims preparation expenses, or costs of dispute resolution.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Owner before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Owner. The most recent schedule of values approved by the Owner (i.e. the "Schedule of Values") shall be used as a basis for reviewing the Contractor's Applications for Payment. If the Owner believes at any time the schedule of values is unbalanced, the Contractor shall, after review and agreement with the Owner, adjust the schedule of values accordingly.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 6, including all Modifications thereto;

- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- .5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 15.2.3 When the Control Estimate is acceptable to the Owner and Engineer, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Engineer with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Engineer of any inconsistencies between the Control Estimate and the revised Contract Documents.

§ 15.3 Applications for Payment

§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Engineer an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Engineer require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 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 liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 15.4 Certificates for Payment

§ 15.4.1 The Engineer will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Engineer determines is properly due, or notify the Contractor and Owner of the Engineer's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, based on the Engineer's evaluations of the Work and the data in the Application for Payment, that, to the best of the Engineer's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Engineer. However, the issuance of a Certificate for Payment will not be a representation that the Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 The Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Engineer's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Engineer is unable to certify payment in the amount of the Application, the Engineer will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Engineer cannot agree on a revised amount, the Engineer will promptly issue a Certificate for Payment for the amount for which the Engineer is able to make such representations to the Owner. The Engineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, and the Owner may withhold a payment, recover from the Contractor a payment previously made, or offset against any current payments due under the Contract Documents or under any other agreement between the Contractor and the Owner amounts previously paid, to such extent as may be necessary in the Engineer's or the Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied or Work rejected by any government authority having jurisdiction over the Project;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 15.4.4 When either party disputes the Engineer's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.4.5 If the Owner is entitled to reimbursement or payment from the Contractor pursuant to the Contract Documents, such payment shall be made within ten (10) days after the Owner's written demand (unless a different time for such payment is expressly provided for in the Contract Documents). Notwithstanding anything in the Contract Documents to the contrary, if the Contractor fails to timely make any payment due the Owner under the Contract or under any other agreement between the Owner and the Contractor or if the Owner incurs any costs and expenses to cure any default of the Contractor under the Contract or under any other agreement between the Owner and the Contractor or to correct defective Work, the Owner shall have the right to offset such amount against the Contract Sum and amounts otherwise payable to the Contractor pursuant to any other agreement and may elect either to: (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to

the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 15.5.2 Neither the Owner nor Engineer shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law. Notwithstanding anything in the Contract to the contrary, if the Owner withholds payment to the Contractor pursuant to Section 15.4.3.3, the Owner may elect, in the Owner's reasonable discretion, to make any payment requested by the Contractor on behalf of a Subcontractor of any tier jointly payable to the Contractor and such Subcontractor; provided, however, such right shall not be construed to create any obligation from the Owner to any Subcontractor or materialman.

§ 15.5.3 A Certificate for 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.

§ 15.5.4 Provided the Owner has made payment of all undisputed amounts due to the Contractor hereunder, the Contractor shall defend, indemnify, and hold harmless the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If any lien or liens are claimed on the Owner's or any other person's or entity's property by any person or entity as a result of the Work, provided the Owner has made payment of all undisputed amounts due to the Contractor hereunder, the Contractor shall cause the lien or liens to be satisfied or transferred to other security in accordance with Section 713.24, Florida Statutes. If the Contractor fails to do so within twenty (20) days after receiving notice of such lien or claim of lien, the Owner may take such action as it deems advisable to protect itself from such lien or claim of lien and the Contractor shall pay to the Owner the reasonable amounts incurred by the Owner, including reasonable attorneys' and paralegals' fees in taking such protective action. The obligations of the Contractor under this Section 15.5.4 are in addition to and in no way to be construed as a limitation of the obligations of the Contractor's or any Subcontractors' surety under any payment bond.

§ 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, and no items of Work remain to be completed except for minor punch list items not interfering with such intended use, and a certificate of occupancy or its equivalent has been issued by the applicable building authority for the Project.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Owner determines that the Work or designated portion thereof is substantially complete, the Owner will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, 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.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and, if required by the Owner, the Engineer will promptly make such inspection and, when the Owner and Engineer find the Work acceptable under the Contract Documents

and the Contract fully performed, the Engineer will promptly issue a final Certificate for Payment stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Engineer's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.7.2 Final payment shall not become due until thirty (30) days after all conditions specified in Section 4.2.1 of this Agreement have been satisfied, including the Contractor having delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien 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 lien, including costs and reasonable attorneys' fees.

§ 15.7.3 The making of final payment shall not constitute a waiver of claims by the Owner.

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

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work 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, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. Without limitation of the foregoing, the Contractor shall, and shall cause its employees, agents (including Subcontractors) and other representatives to, comply with the requirements of the Occupational Safety and Health Act of 1970, as amended, and similar applicable laws. The Contractor shall be deemed the "employer" within the meaning of such applicable laws, and neither the Owner nor its consultants shall be responsible for any OSHA non-compliance in connection with performance of the Work. The Contractor shall notify the Owner immediately in the event of an Occupational Safety and Health Administration inspection when no Owner personnel are on site. In addition, the Contractor shall comply with the applicable requirements of the Owner's safety program, if any. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Engineer 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 Section 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Engineer of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum

shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. As used herein, the term "rendered harmless" shall be interpreted to mean that levels of asbestos, polychlorinated biphenyl (PCB) or any hazardous materials are less than any applicable exposure standards set forth in EPA and OSHA regulations.

§ 16.2.2 Intentionally deleted.

§ 16.2.3 Intentionally deleted

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall, and shall cause its Subcontractors to, purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and having policy holder ratings no lower than "A" and financial ratings not lower than "X" in the current edition of Best's Insurance Guide. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a longer duration is stated below:

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$ 1,000,000) each occurrence, Two Million Dollars (\$ 2,000,000) general aggregate, and Two Million Dollars (\$ 2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 9.15.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than One Million Dollars (\$ 1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation at statutory limits, and Employer's Liability with limits specified in Section 17.1.6, for all persons whom the Contractor employs (or uses as subcontract labor if the Subcontractor is uninsured) in carrying out any Work. Such insurance shall be in strict compliance with the requirements of the most current and applicable workers' compensation insurance laws in effect from time to time in the state(s) where the Work is performed, and shall include endorsements that provide: (a) Voluntary Compensation; (b) If the Contractor will borrow or otherwise use loaned employees (including if the Contractor leases a piece of equipment and it comes with an operator or the Contractor obtains employees from temporary agencies), the Contractor shall obtain an Alternate Employer's Endorsement; (c) If the Contractor will lease "employees" from a professional employer organization, the Contractor shall obtain Leased Employee Worker's Compensation coverage endorsement; and (d) If the Work is taking place on or adjacent to navigable waters, then USL&H and Jones Act coverage is required..

§ 17.1.6 Employers' Liability with policy limits not less than Five Hundred Thousand Dollars (\$ 500,000) each accident, Five Hundred Thousand Dollars (\$ 500,000) each employee, and Five Hundred Thousand Dollars (\$ 500,000) policy limit.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, (including the stamping by a professional engineer or the submission of working drawings) the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and Two Million Dollars (\$ 2,000,000) in the aggregate, which insurance shall be retroactive to the date services were first performed for the Project and shall be maintained for a period of not less than four (4) years after final completion of the Project.

§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and Two Million Dollars (\$ 2,000,000) in the aggregate.

Coverage under Section 17.1.7 and this Section 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and Two Million Dollars (\$ 2,000,000) in the aggregate.

§ 17.1.9 Property insurance providing coverage for property in which the Contractor retains the risk of loss including its own equipment (stationary or mobile), tools (including employee tools), supplies, materials, and any other property owned or leased by the Contractor. If the Contractor chooses to self-insure any of the property described under this Section, it is agreed that the Contractor shall hold the Indemnitees harmless for any loss or damage to that property.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1, and complete copies of policies including endorsements if requested by the Owner, at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner and the Viera East Community Development District as additional insureds on the Contractor's Commercial General Liability and excess or umbrella liability policy.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor, which shall not exceed \$10,000, and for which amounts the Contractor shall be solely responsible.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Viera East Community Development District, the Engineer, and the Engineer's Consultants as additional insureds for claims arising from, or caused in whole or in part by, the Contractor's, or its Subcontractors' or suppliers', negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims arising from or caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 10 01, CG 20 37 10 01, and, with respect to the Engineer and the Engineer's Consultants, CG 20 32 07 04. Further, the commercial general liability insurance shall include:

- (a) Contractual liability coverage to the same or greater extent as covered under ISO commercial general liability coverage form CG 00 01 10 04.
- (b) Coverage for ongoing operations, premises/operations, independent contractors, underground, explosion and collapse (XCU) (for trades with trenching or excavation activities within their scope of work), fire legal liability, and any persons or entities performing work on behalf of the Contractor.
- (c) Products and completed operations coverage, which coverage shall be maintained in effect until expiration of the applicable statute of repose for the state in which the Project is located. Provisions excluding products and completed operations, or those that limit completed operations coverage to ongoing operations only, will be unacceptable.
- (d) A severability or separation of insureds clause.

- (e) NO language or endorsements (whether ISO or manuscript) excluding or limiting coverage for claims, suits, or cross-suits by an insured against another insured.
- (f) NO limiting modification of the ISO standard "insured contract" exception to the contractual liability exclusion.
- (g) NO exclusion or limitation of coverage for injury to employees or independent contractors other than that contained in the standard coverage ISO form.
- (h) NO limiting modification to the ISO standard "occurrence" definition.
- (i) NO conditions on coverage based on any insured's compliance with risk transfer mechanisms through insurance, indemnity clauses, or otherwise.
- (j) NO form of exclusion of subcontracted work, and no deletion of or modification to the subcontractor exception to the "damage to your work" exclusion.

§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.14 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits
<<>>	<<>>

§ 17.1.15 The limits of insurance stated above for each type of insurance are minimum limits only; in the event the Contractor's policy provides greater limits, then the additional insureds shall be entitled to, or to share in, the full limits of such policy, and this Agreement shall be deemed to require such full limits.

§ 17.1.16 Failure to comply with any of the insurance requirements will be deemed a material breach of the Contractor's obligations under this Contract. The Owner has the right to withhold payment to the Contractor until it complies with these insurance requirements. Without limitation of other remedies available to the Owner under the Contract, if the Contractor fails to purchase and maintain any insurance required under this Article 17, Owner may but shall not be obligated to, upon 3 days prior written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

§ 17.1.17 The Contractor, for itself and its insurers, hereby waives any and all rights of subrogation they might have against the Indemnitees now or in the future.

§ 17.1.18 Contractor shall cause each Subcontractor to procure insurance reasonably satisfactory to Owner and provide to Owner upon Owner's request reasonable evidence thereof, including: (i) workers compensation with full statutory limits for employer's liability as required by applicable laws; (ii) commercial general liability insurance including direct and contingent liability with minimum limits of \$1,000,000 per occurrence / \$2,000,000 aggregate for personal injury, death or property damage, which shall include coverage for Broad Form Hold Harmless Agreement; and (iii) automobile liability insurance with bodily injury limits of \$250,000 per person, \$500,000 per accident, and \$50,000 per accident for Property Damage. The liability coverage required of Subcontractors shall name Owner and Contractor as additional insureds. Certificates of insurance shall be delivered to Owner before construction of the improvements is started. The additional insured endorsement included in the Subcontractor's commercial general liability policy shall state that coverage is afforded the additional insureds with respect to claims arising out of or caused in whole or in part by operations performed by or on behalf of Contractor. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.

§ 17.2 Owner's Insurance

§ 17.2.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 17.2.2 Property Insurance

§ 17.2.2.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees. Notwithstanding the foregoing, this coverage shall not extend to any of Contractor's, Subcontractor's or Sub-subcontractor's vehicles, mobile equipment, tools or items otherwise required to be covered by the Contractor's, Subcontractors' or Sub-subcontractor's property insurance and shall not respond or provide coverage for the loss of use of these items. The Contractor shall make its own arrangements for any insurance it may require on such vehicles, mobile equipment, tools and other items. Any such policy obtained by the Contractor under this Section 17.2.2.1 shall include a waiver of subrogation in accordance with the requirements of Section 17.2.2.7.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions unless such loss is caused by the Contractor or those for whom the Contractor is responsible.

§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a certificate of insurance for the property insurance policy required by this Section 17.2.2.

§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Owner; and (2) the Contract Time and Contract Sum shall be equitably adjusted. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Engineer and Engineer's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered and paid by property insurance required by this Agreement or other property insurance applicable to the Project and provided such property insurance permits a waiver of subrogation to be granted without additional cost to the insured, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Engineer, Engineer's consultants, Separate

Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.2.2.7.2 Intentionally deleted.

§ 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner in good faith and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Engineer and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Engineer and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 17.2.3 Intentionally deleted.

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder, which bonds shall be one hundred percent (100%) unconditional bonds issued by a surety satisfactory to the Owner, and otherwise shall comply with the following specific requirements:

.1 The Performance Bond shall name the Owner as obligee.

.2 Both bonds shall be executed by a responsible surety acceptable to the Owner and licensed in the State in which the Project is located, with a Best's rating of no less than A/XIII.

.3 Both bonds shall each be in amount equal to the Contract Sum.

.4 The attorney-in-fact who executes the bonds on behalf of the surety shall affix thereto a certified and current copy of the power of attorney.

.5 Every bond under this Subsection must display the Surety Bond Number.

.6 A rider including the following provisions shall be attached to each bond (or, alternatively, each bond shall include the following language or substantially similar language acceptable to the Owner): (i) the surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of the Owner or of the Contractor to the other, shall not release the surety of its obligations hereunder, and notice to the surety of such matters is hereby waived; (ii) the surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Contractor shall automatically increase the obligation of the surety on the bond and notice to the surety is not required for such increased obligation; and (iii) the surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the obligees.

§ 17.3.2 The Contractor's payment bond shall comply with the requirements of Section [255.05](#), Florida Statutes. No Work shall commence on the Project until the Notice of Commencement and copy of the Payment Bond are recorded in the public records of the County where the Project is located and certified copies thereof are posted at the Project site.

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

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Owner or the Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, 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 established under Section 15.6.3, or by terms of an applicable 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 after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

§ 18.6 Nothing contained in this Article 18 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 18.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Successors and Assigns

§ 19.1.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. The Contractor may not transfer, sell or assign the Contract voluntarily or involuntarily (directly or indirectly, whether by operation of law or otherwise, including by merger, stock or asset sale or otherwise) without prior written consent of the Owner. If the Contractor attempts to make such an assignment without such consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

§ 19.1.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, or to an affiliate of the Owner, or to a transferee of all or substantially all of the Owner's interest in the Project, if the lender or the affiliate or the transferee, as the case may be, assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities 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 Owner and the Engineer timely notice of when and where tests and inspections are to be made so that the Owner and the Engineer may be present for such procedures.

§ 19.4 The Owner's representative:

(Name, address, email address and other information)

Tim Melloh, 2300 Clubhouse Drive, Viera, Florida 32955, tmelloh@vieraeastcdd.com

§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

James Roberts, 202 N Laurel Ave, Sanford, Florida 32771, 407-330-2892

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 19.7 Contractor's Representations and Warranties

The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work: (i) that it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the work and perform all obligations hereunder; (ii) that it is able to furnish the tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder; (iii) that it and its Subcontractors are authorized to do business in the State in which the Project is located and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over them and over the Work and Project; (iv) that its execution of this Agreement and its performance thereof is within its duly authorized power; and (v) that its duly authorized representative has visited the site of the Project, familiarized itself with the local and special conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents. The foregoing warranties are in addition to, and not in lieu of, any and all liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance hereunder. The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

§ 19.8 Survival

All of the Contractor's representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

§ 19.9 No Waiver; Amendment

The failure of a party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

§ 19.10 Counterparts

This Agreement may be executed in counterparts, and a complete set of such executed counterparts shall constitute the same Agreement, and the signature of any party to any counterpart shall be deemed as signature to, and may be appended to, another counterpart. For purposes of executing this Agreement, a document signed and transmitted by facsimile or by emailed PDF scan shall be treated as an original document. The signature of any party on a faxed or emailed PDF scanned version of this Agreement shall be considered as an original signature and the document transmitted shall be considered to have the same binding legal effect as if it were originally signed. At the request of either party, any facsimile or PDF scanned document shall be re-executed by both parties in original form. No party to this Agreement may raise the use of facsimile, emailed PDF scan or the fact that any signature was transmitted by facsimile or email as a defense to the enforcement of this Agreement or any amendment executed in compliance with this Section.

§ 19.11 Interpretation

In the Contract Documents, the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders. Unless the context of the Contract Documents otherwise clearly requires, references to the plural include the singular; the term "including" is not limiting and whenever the word "including", "include", or "includes" is used in this Agreement it shall be deemed to be followed by the words "without limitation"; and the terms "hereof," "herein", "hereunder" and similar terms in the Contract Documents refer to the Contract Documents as a whole and not to any particular provision of the Contract Documents unless stated otherwise. Each party, together with their respective legal counsel, has contributed substantially to the preparation of this Agreement, and, as such, this Agreement shall not be interpreted more favorably against one party than the other solely upon the basis of which party actually drafted this Agreement. Headings are for convenience only and shall not be used for interpretation of the language in the Contract Documents.

§ 19.12 No Oral Modification

Notwithstanding anything in the Contract Documents to the contrary, for any decision, approval or consent of the Owner to be binding against the Owner it must be in writing and for any Modification that changes the Contract Sum or Contract Time to be valid it must be signed by either the Owner's Designated Representative.

§ 19.13 Lender

The Owner may elect to finance the Work with a loan from one or more lenders. The Contractor shall execute and deliver to the Owner documents as may be reasonably required by such lenders or their agents provided such documents do not materially alter the Owner's rights and obligations under this Agreement. The Contractor agrees to use its best efforts to comply with the requirements of the Owner's lenders that bear upon the performance of the Contractor's services. The Contractor shall also:

.1 Consent to and execute all documents reasonably requested by the Owner in connection with the assignment of this Agreement and any other Contract Documents to its lenders for collateral purposes. Such assignment shall provide that the Contractor agrees that notwithstanding a default by the Owner under the provisions of this Agreement that would give the Contractor the right to terminate this Agreement, the Contractor will continue to perform its obligations hereunder (on the same terms and conditions as are set forth herein) for and on account of such lenders; and

.2 Promptly furnish the Owner with information, documents, and materials that the Owner may reasonably request from time to time in order to comply with the requirements of its lenders.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Engineer fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Engineer, terminate the Contract and recover from the Owner, as the Contractor's sole remedy, payment for Work executed, including reasonable overhead and profit, and reasonable direct costs actually incurred by the Contractor by reason of such termination.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 is adjudged a bankrupt, files for bankruptcy protection, or makes a general assignment for the benefit of its creditors, if a receiver is appointed on account of insolvency, or in the event of other evidence of the Contractor's insolvency;
- .5 fails to prosecute the Work to completion in a diligent and timely manner and in accordance with the provisions of the Contract Documents;
- .6 fails or refuses to provide insurance or proof of insurance as required by the Contract Documents;
- .7 otherwise is guilty of a material or substantial breach of a provision of the Contract Documents; or
- .8 is guilty of a material substantial breach of a provision of any other agreement between the Owner and the Contractor.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Engineer's services and expenses made necessary thereby, and other damages incurred by the Owner and not

expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner with interest thereon at the rate at the legal rate prevailing from time to time at the place where the Project is located. This obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor, as the Contractor's sole remedy, for Work executed; and reasonable, actual, out-of-pocket costs incurred by reason of such termination.

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Intentionally deleted.

§ 21.2 Notice of Claims

§ 21.2.1 Claims by the Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Owner and the Engineer within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Denial in whole or part of a COR submitted in accordance with Section 13.5 shall be deemed the occurrence of the event giving rise to a Claim for any adjustment of the Contract Sum or Contract Time sought in the COR but denied in whole or in part. For the avoidance of doubt, the Contractor shall be deemed to waive any Claims for adjustment of the Contract Sum or Contract Time: (a) which the Contractor sought via COR that was denied and as to which the Contractor did not submit a Claim within twenty-one (21) days thereafter; (b) which the Contractor failed to timely and properly request as provided in Section 13.5; and (c) based on changes in the Work or other events or circumstances for which a Change Order was previously executed.

§ 21.2.2 Claims by the Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Owner.

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation;

(2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.

§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 21.10 Continuing Contract Performance

Pending final resolution of a Claim, except as 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.

§ 21.11 Waiver of Claims for Consequential Damages

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Additionally and notwithstanding anything to the contrary herein, the parties expressly acknowledge and agree that this waiver of claims for consequential damages does not apply to any damages, liabilities, costs or expenses proximately caused by either party's fraud, gross negligence or willful misconduct or that are covered by insurance, or to third-party claims for which the Contractor has an indemnification obligation under the Contract.

This Agreement entered into as of the day and year first written above. Each of the individuals executing this Agreement represent and warrant that he has been duly authorized by the respective party on whose behalf he is executing this Agreement to execute this Agreement on such party's behalf and that once executed by him, this Agreement shall be valid and binding upon such party.

By:

(Signature)



(Printed name and title)

« »«»

By:

(Signature)



(Printed name and title)

Exhibit A
NOT USED

Exhibit B

Drawings and Specifications

THIS INDEX OF DRAWINGS AND SPECIFICATIONS IS PROVIDED FOR EXPEDIENCY. HOWEVER, THE ACTUAL DRAWINGS AND SPECIFICATIONS LISTED IN THIS INDEX, WHICH THE CONTRACTOR ACKNOWLEDGES HAVING BEEN PROVIDED, ARE THE "DRAWINGS" AND THE "SPECIFICATIONS" INCORPORATED INTO THE AGREEMENT BY REFERENCE.

Exhibit C

Initial Schedule of Values

Exhibit D

Basin V Drainage Map

THIS DRAWING IS PROVIDED FOR EXPEDIENCY. HOWEVER, THE ACTUAL DRAWING LISTED IN THIS INDEX, WHICH THE CONTRACTOR ACKNOWLEDGES HAVING BEEN PROVIDED, IS "SECTION V" OF THE PROJECT MANUAL INCORPORATED INTO THE AGREEMENT BY REFERENCE.

Exhibit D1

Form of Waiver and Release of Lien Upon Progress Payment

WAIVER AND RELEASE OF LIEN UPON PROGRESS PAYMENT

The undersigned lienor, in consideration of the sum of \$ _____, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through _____ (*insert date*) to _____ (*insert name of Lienor's customer*) on the job of _____ ("Owner") to the Owner's following property:

This waiver and release does not cover any retention or labor, services, or materials furnished after the date specified.

By: _____
Printed Name: _____
Title: _____
Lienor's Address: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ____ day of _____, 2021, by _____ . He/she is () personally known to me or () has produced _____ as identification.

(NOTARY SEAL) Notary Public, State of Florida
X _____

Exhibit D2

Form of Waiver of Lien (Final)

WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

The undersigned lienor, in consideration of the final payment in the amount of \$ _____, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to _____ (insert name of Lienor's customer) on the job of _____ ("Owner") to the Owner's following property:

(the "Project"). The undersigned further agrees that it will not perform any further work on the Project, through itself or through persons working under the undersigned, save and except corrective and warranty work for which payment has been made, and will indemnify Owner for any sums claimed to be due or owing on the Project by the undersigned, or any persons working under the undersigned. The undersigned will cause to be released or bonded any liens filed hereafter, including any lien filed by the undersigned, and will indemnify Owner from any such liens.

The undersigned makes this sworn statement based on personal knowledge, and with the understanding that Owner is relying on this representation in order to make final payment to the undersigned lienor for this Project.

By: _____
Printed Name: _____
Title: _____
Lienor's Address: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ____ day of _____, 2020, by _____. He/she is () personally known to me or () has produced _____ as identification.

(NOTARY SEAL) _____ Notary Public, State of Florida
X _____