

**GENERAL CONDITIONS**

**EXHIBIT "A"**

**GENERAL CONDITIONS**

**Table of Contents**

**ARTICLE 1 - DEFINITIONS .....2**

**ARTICLE 2 - PRELIMINARY MATTERS .....6**

**ARTICLE 3 - CORRELATION, INTERPRETATION, AND INTENT OF CONTRACT  
DOCUMENTS .....8**

**ARTICLE 4 - AVAILABILITY OF LANDS; PHYSICAL CONDITION; REFERENCE POINTS.....9**

**ARTICLE 5 – INSURANCE AND BONDS ..... 10**

**ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES..... 12**

**ARTICLE 7 – WORK BY OTHERS..... 20**

**ARTICLE 8 – COUNTY’S RIGHTS AND RESPONSIBILITIES ..... 20**

**ARTICLE 9 – CEI’S (A/E’S) STATUS DURING CONSTRUCTION..... 21**

**ARTICLE 10 – CHANGES IN THE WORK ..... 23**

**ARTICLE 11 – CHANGE OF CONTRACT SUM..... 24**

**ARTICLE 12 – CHANGE OF THE CONTRACT TIME..... 29**

**ARTICLE 13 – WARRANTY AND GUARANTEE; TESTING AND INSPECTIONS;  
CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK..... 31**

**ARTICLE 14 – PAYMENTS AND COMPLETION..... 34**

**ARTICLE 15– SUSPENSION OF WORK AND TERMINATION ..... 40**

**ARTICLE 16 – SETTLEMENT OF DISPUTES ..... 41**

**ARTICLE 17 - MISCELLANEOUS..... 41**

## GENERAL CONDITIONS

### ARTICLE 1 - DEFINITIONS

Whenever in the Contract Documents or performance of the contract, the following terms are used (applicable to both the singular and plural), the intent and meaning of such items shall be interpreted as follows:

- 1.1 Acceptance. A formal action by the County of accepting a portion of the Work as being complete after inspection by the County representative. See also, Final Acceptance.
- 1.2 Affidavit. An instrument, the form of which shall be provided by the County, which Contractor must provide as a condition precedent to certification of an Application for Progress Payment or as a condition precedent to certification of the Application for Final Payment, unless the County has received an applicable Consent of Surety.
- 1.3 Application for Progress Payment. May refer to the actual written form or the Contractor's act of submitting the written form to the County to request payment for a portion of the Work prior to an Application for Final Payment. The actual form shall be supplied by the County.
- 1.4 Bid or Bid Documents. The Contractor's written submission to the County in response to the invitation to bid (ITB) issued by the County for this Project.
- 1.5 Calendar Day. Any day, including Saturdays, Sundays, and holidays, regardless of weather conditions. All references to a "day" in the Contract Documents, shall mean a Calendar Day unless specifically otherwise designated.
- 1.6 Change Directive. A written order, signed by the County, directing a change in the Work to Contractor which may or may not ultimately result in an increase in Contract Sum or Contract Time. A Change Directive shall be utilized when the County determines in its sole discretion that the change in Work is necessary to the Project but the resulting change in Contract Time or Contract Sum, if any, either cannot be or has not yet been calculated, or the County and Contractor have not reached an agreement on any change in Contract Time or Contract Sum. The Contractor shall proceed with the Work required by the Change Directive and may preserve any claim in accordance with the Contract Documents.
- 1.7 Change Order. A written Modification to the Contract signed by the County and Contractor documenting an addition, deletion, or revision in the Work, with or without an adjustment in the Contract Sum or Contract Time.
- 1.8 Construction, Engineering & Inspection (CEI) or / Architect/Engineer (A/E). A person or entity selected by the County to perform Work under a separate written Contract with the County to perform consulting work on the Project related to project administration supplemental to that performed directly by the County Engineer and County staff. In the event there is no CEI or A/E on the Project, but a task is reference in the Contract Documents as being performed by the CEI or A/E, then it shall be agreed that the term "County" or "Engineer," shall be substituted.

## GENERAL CONDITIONS

- 1.9 Contract. The sum of all legal rights and obligations between the Contractor and the County as defined by the Contract Documents and applicable law.
- 1.10 Contractor's Project Manager. The individual responsible for the day-to-day administration of the Project for the Contractor who shall have authority to act on behalf of and bind the Contractor in matters pertaining to the Project unless otherwise expressed in writing by the Contractor.
- 1.11 Consent of Surety. A document executed by the Contractor's surety indicating that it consents to the County making Final Payment to the Contractor and that the surety agrees it shall not be relieved of any obligations under the bond to the County as a result of consenting to or the making of Final Payment.
- 1.12 Contract Documents. The Contract Documents comprise the entire written Contract between the County and the Contractor, and are made part of the Contract, and include the documents enumerated in Article 1 of the Construction Contract.
- 1.13 Contract Sum. The total monies payable to the Contractor as consideration for completion of the Work in accordance with the Contract Documents.
- 1.14 Contract Time. The number of consecutive days, as stated in Article 2 of the Construction Contract, during which the Contractor shall perform the Work.
- 1.15 Contractor. The entity identified in the Construction Contract and referred to throughout the Contract Documents as if singular in number. The Contractor shall designate in writing a representative(s) who shall have the express authority to bind the Contractor with respect to all matters under the Contract. The "Contractor" means the Contractor or its authorized representative(s).
- 1.16 Contractor's Release. A document or language within a document such as an Application for Progress Payment or Application for Final Payment wherein the Contractor agrees to release and discharge County and the CEI or A/E from all claims and demands related to a designated portion of the Work, except any claims for retainage or disputed claims, upon receipt of payment from the County.
- 1.17 County: Shall mean the County of Volusia (a body corporate and politic and a subdivision of the State of Florida) including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status.
- 1.18 County Engineer. The County Engineer is the employee of the County who shall have the express authority to bind the County with respect to all matters requiring the County's approval or authorization. Phrases, such as "by the County" or "to the County," refer to the County Engineer or his delegate, which may include the County's designated Project Manager or CEI or A/E. No person shall be presumed to have authority to bind the County to Modifications that change the Contract Sum or Contract Time without express written consent of the County

## GENERAL CONDITIONS

Engineer. In some instances the County Engineer may be required by County ordinance or policy to request the approval of the County Manager or County Council to effectuate changes in Contract Sum, Contract Time or significant changes in Scope of Work.

- 1.19 County Project Manager. The County employee or authorized representative of the CEI or A/E who is assigned to the Project and is responsible for the day-to-day administration of the Project for the County. The County may change the Project Manager at any time by providing notice to the Contractor.
- 1.20 Contract Plans. The official approved drawings or plans or exact reproductions thereof, which have been prepared and signed and sealed by an engineer on behalf of the County and shall be utilized by the Contractor, which show the location, character, dimensions and details of the Work to be done and which are considered as part of the Contract Documents, including, but not necessarily limited to those Contract Plans enumerated in Article 1.2.1 of the Construction Contract.
- 1.21 Engineer. References to the "Engineer" shall be presumed to refer to the County Engineer.
- 1.22 Engineer of Record. The professional engineer or engineering firm contracted or employed by the County and registered in the State of Florida who is responsible for the preparation of the plans and specifications. The engineer of record may be County in-house staff or a consultant retained by the County.
- 1.23 Field Order. A written instrument issued by the County to the Contractor, which clarifies or interprets the Contract Plans or Specifications or other Contract Documents, and/or orders minor variations in the Work, but which does not involve an adjustment in Contract Sum or Contract Time.
- 1.24 Final Completion. The date the County certifies that all Work required to complete the Project is complete.
- 1.25 Final Payment. The final payment by the County to the Contractor for all sums due and retained by the County pursuant to the Contract.
- 1.26 Laborer. Any person other than an architect, landscape architect, engineer, surveyor and mapper, and the like who, under properly authorized contract, personally performs on the site of the improvement labor or services for improving real property and does not furnish materials or labor service of others.
- 1.27 Liquidated Damages. A monetary payment made for damages, agreed by both parties in contract which are due and payable for breach by a party. May be applied on a daily basis for as long as the breach is in effect. Cannot be imposed as an arbitrary penalty. Must meet the threshold of reasonableness.
- 1.28 Lump Sum Pay Item. A pay item within the Contract Documents, bid by the Contractor as a total dollar amount inclusive of all labor and material required to furnish the item and paid for by percentage of completion in place for a given application for payment, as certified by the County.

## GENERAL CONDITIONS

- 1.29 Materialman. Any person who furnishes materials under Contract to the County, Contractor, subcontractor, or sub-subcontractor on the site of the improvement or for direct delivery to the site of the improvement or, for specially fabricated materials, off the site of the improvement for the particular improvement, and who performs no labor in the installation thereof.
- 1.30 Modification. A Modification is a written change to the Contract Documents resulting in a clarification or change to the Scope of Work or material terms of the Contract, which may or may not include changes to the Contract Plans, the Contract Sum or the Contract Time. Changes to Contract Sum or Contract Time, shall be made in strict accordance with the Construction Contract. Modifications may include a Field Order, Change Directive or Change Order.
- 1.31 Notice to Proceed (NTP). The official document from the County to the Contractor establishing a date on which the Contract Time will commence.
- 1.32 Payment & Performance Bond. A bond(s), issued by a surety in accordance with §255.05 Florida Statutes, Article 6 of the Construction Contract and Article 5 of these General Conditions.
- 1.33 Person. The word “person” shall mean and includes any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or capacity, whether appointed by a court or otherwise, and any combination of individuals or “persons.”
- 1.34 Pre-Construction Conference. A meeting or meetings including the Contractor’s key personnel, key subcontractors, the CEI or A/E (if applicable), County and others involved with the planning and execution of the Work, which shall take place prior to issuance of a Notice to Proceed.
- 1.35 Progress Payment. A monthly payment made by the County to the Contractor after submission of an Application for Progress Payment by Contractor and subsequent issuance of a Certificate for Payment by the County.
- 1.36 Project. The sum of all construction activity related to the Contract Documents.
- 1.37 Request for Information. A written submission by Contractor to the County requesting clarification or instruction with respect to the Contract Documents or means and methods related to the Work.
- 1.38 Resident Project Representative. An employee of the County or an authorized representative of the CEI or A/E who is assigned to the Project and is responsible for overseeing that the Work is constructed in accordance with the requirements of the drawings and specifications.
- 1.39 Scope of Work or Work. The construction and services required by the Contract Documents including all labor, materials, equipment and services incidental thereto, provided or to be provided by the Contractor to fulfill the Contractor’s obligation to achieve Final Completion of the Project.
- 1.40 Shop Drawings. All diagrams, illustrations, brochures, schedules, and/or other data which are prepared by Contractor, a subcontractor, manufacturer, supplier,

## GENERAL CONDITIONS

distributor, or other person on behalf of the Contractor, and which illustrate the equipment, material, or some portion of the Work.

- 1.41 Subcontractor. A person other than a materialman or laborer who enters into a contract with the Contractor for the performance of any part of the Work. Unless expressly stated otherwise, reference to a "Subcontractor" or "subcontractor" shall have the same meaning and shall include sub-subcontractor's and lower tier contractors as well.
- 1.42 Sub-subcontractor. A person other than a materialman or laborer who enters into a contract with a Subcontractor for the performance of any part of the Work included in the Subcontractor's contract with the Contractor.
- 1.43 Substantial Completion. The date upon which the progress of the Work is sufficiently complete in accordance with the construction contract Documents so that the County may use, occupy, or utilize the Work for its intended purpose, as certified by the County.
- 1.44 Surety. The entity that has undertaken the duty of obligor on the Payment & Performance Bond provided by the Contractor in accordance with the Contract Documents and §255.05 Florida Statutes.
- 1.45 Superintendent. The Contractor's authorized executive representative(s) responsible for the job site and progress of the Work at all times.

## ARTICLE 2 - PRELIMINARY MATTERS

- 2.1 The County relied upon the accuracy of all forms submitted in response to the Invitation to Bid in its decision to enter a Contract with Contractor for performance of the Work. Regardless of whether or not all forms required to be submitted in response to the ITB, are incorporated into the Contract Documents by reference, failure to submit any required form or knowing or negligent submission of inaccurate information on the forms shall be considered a material breach of the Contract.

2.2 Delivery of Bonds.

The Contractor shall deliver to the County the required Payment & Performance Bond in accordance with §255.05 Florida Statutes, Article 5.2 herein and Article 6, of the Construction Contract. The Contractor shall record the bonds at the County of Volusia Clerk of the Court at Contractor's expense.

2.3 Contractor's Pre-Start Representations.

Contractor represents that it has familiarized itself with, and assumes full responsibility for having familiarized itself with, the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work, and represents that it has correlated its study and observations with the requirements of the Contract Documents. Contractor also represents that to the extent it deems necessary it has studied all surveys and investigation reports of subsurface and latent physical conditions referred to

## GENERAL CONDITIONS

in Article 4.2 herein and made such additional surveys and investigations as it deems necessary for the performance of the Work at the Contract Sum in accordance with the requirements of the Contract Documents and that it has correlated the results of all such data with the requirements of the Contract Documents.

### 2.4 Commencement of Contract Time; Notice to Proceed.

A Notice to Proceed (NTP) may be issued at any time after the County executes the Contract Documents and after the occurrence of the Pre-Construction Conference.

### 2.5 Before Starting Construction.

2.5.1 Before undertaking any part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. It shall at once report in writing to the County any conflict, error, or discrepancy which it may discover.

2.5.2 Within ten (10) days after the County receives the signed Contract from the Contractor, Contractor shall submit to the County a tentative progress schedule indicating the starting and completion dates of the various stages of the Work, a preliminary schedule of shop drawing submissions and the completed schedule of values.

2.5.3 Within twenty (20) days after the County receives the signed Contract from the Contractor, but before starting the Work at the site, a Preconstruction Conference will be held by the County to review the above schedules, to establish procedures for handling Shop Drawings, processing Applications for Progress Payment, preparation and maintenance of record drawings, Modifications, use of premises, safety procedures and housekeeping. The County Representative; County Project Manager; CEI or A/E, if not the County Representative; Resident Project Representative, if applicable; Contractor and their Superintendent(s); Subcontractors and their Superintendents; key suppliers and any other representatives of parties involved in the Project and others as required by the County shall be present at the Preconstruction Conference.

### 2.6 Starting the Project.

Contractor shall not commence actual construction activity at the site prior to the date of commencement indicated in the Notice to Proceed without written authorization from the County.

## GENERAL CONDITIONS

### ARTICLE 3 - CORRELATION, INTERPRETATION, AND INTENT OF CONTRACT DOCUMENTS

#### 3.1 Intent.

It is the intent of the Contract Plans and Specifications to describe a complete project to be constructed in accordance with the Contract Documents and to include all items necessary for the proper execution and completion of the Work. The Contract Documents comprise the entire Contract between County and the Contractor. They may be altered only by a Modification in accordance with the Contract Documents.

#### 3.2 Contract Documents.

The Contract Documents are intended to be complementary; what is called for by one is as binding as if called for by all. The contractor shall review the contract documents and if there is a conflict, error, discrepancy, or omission in these documents, it shall call it to the County's attention in writing, at once, and before proceeding with the Work affected thereby. Generally, written figure dimensions on drawings shall govern over scale dimensions, and detailed drawings shall govern over general drawings. Any Work that may reasonably be inferred from the Contract Documents, as being required to produce the intended result shall be supplied by the Contractor whether or not it is specifically stated in the Contract Documents. Work, materials, or equipment described in words, which so applied, have a well-known technical or trade meaning shall be deemed to refer to such recognized meanings.

#### 3.3 Variance of Conditions.

3.3.1 If the Contractor believes that any conditions met by it are at variance with the conditions shown by the Contract Documents, that there is any conflict, error, discrepancy or omission in the Contract Documents, or that any instructions given by the County are at variance with the Contract Documents, it shall notify the County in writing within seventy-two (72) hours of the discovery of such conflict, variance, error, discrepancy, or omission, specifying the same. No Work affected by such conflict, variance, error, discrepancy, or omission shall be done, except in the case of emergency endangering life or property, which would result in a claim by the Contractor for extra compensation until the question has been resolved as herein specified and in accordance with the Construction Contract. The Contractor shall, however, proceed with other Work not in question or affected thereby and not deemed by it to entitle it to extra compensation. The performance by the Contractor of Work affected by the conflict, variance, discrepancy, error, or omission without giving notice within the time above specified or after such notice and before the resolution of the question shall be deemed an acknowledgment by the Contractor that no extra cost is involved, and that if inappropriate, the Work so performed will be removed and replaced with proper Work, and shall constitute an absolute waiver of any claim for extra compensation resulting therefrom.

## GENERAL CONDITIONS

- 3.3.2 If the County determines that a variance, conflict, error, discrepancy or omission exists, the correction of which the Contractor agrees will not involve extra cost, the County shall order the necessary change or correction and the Contractor shall proceed with the Work. If the Contractor does not agree that extra cost is not involved, the matter shall be submitted to the County in the manner provided for in Section 2.11.4.6 of the Construction Contract. The Contractor shall proceed with the changes specified by the County to correct the variance, conflict, error, discrepancy or omission without further delay and the questions of extra compensation shall be determined as provided in the Contract Documents.
- 3.3.3 Under any circumstances wherein delay in the Work during the determination of questions relating to variances, conflicts, errors, or discrepancies, or any other matter would involve, in the opinion of the Contractor, danger to life or property, or violation of applicable laws or regulations, the Contractor shall proceed with the Work and take such steps as it deems necessary to correct the condition. The Contractor shall notify the County within seventy-two (72) hours after the circumstances arose. If the Contractor believes the measures taken entitle it to extra compensation, the provisions of Article 4 of the Construction Contract shall apply.

### **ARTICLE 4 - AVAILABILITY OF LANDS; PHYSICAL CONDITION; REFERENCE POINTS**

#### 4.1 Availability of Lands.

- 4.1.1 County shall furnish, as indicated in the Contract Documents and no later than the date when needed by Contractor, access to the lands upon which the Work is to be done, right-of-way for access thereto, and such other lands which are designated for the use of Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by County, unless otherwise specified in the Contract Documents. If Contractor believes that any delay in County's furnishing these lands or easements entitles it to an extension of the contract time, it may make a claim therefore as provided in Section 3.3.2 of the Construction Contract. County will provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of material and equipment as shown in the Contract Documents.
- 4.1.2 The County will furnish to the Contractor copies of all available boundary surveys upon request.

#### 4.2 Unforeseen Physical Conditions.

Contractor shall notify County within seventy-two (72) hours of discovery of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents. County shall promptly investigate those conditions and determine if further surveys or subsurface tests are necessary.

## GENERAL CONDITIONS

Promptly thereafter, County shall obtain the necessary additional surveys and tests and furnish copies to Contractor. If County finds that physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by Contractor, a Modification shall be issued incorporating the necessary revisions.

### 4.3 Reference Points.

4.3.1 Unless otherwise provided in the Contract Documents, Contractor shall lay out its Work from base lines and benchmarks established by the County and shall be responsible for all measurements in connection therewith.

4.3.2 Unless otherwise provided in the Contracts Documents, the County will furnish upon request by the Contractor, all location and limit marks reasonably necessary for the execution of the Work. Bench marks will also be established by the County at pertinent points for control of elevations and for grades unless otherwise provided in the Contract Documents.

4.3.3 The Contractor shall, at its own expense, furnish all stakes, templates, patterns, platforms, equipment, and labor that may be required in setting and cutting, or laying out any part of the Work. After base lines and bench marks for the Work have been provided by the County, the Contractor shall be held responsible for the proper execution of the Work to such lines and grades and all stakes or other marks shall be preserved by the Contractor until removal is authorized. The County may require that the Work be suspended at any time when for any reason such marks cannot be properly followed.

4.3.4 The Contractor shall keep the County informed, a reasonable time in advance, of the times and places at which it intends to do Work in order that lines and grades may be furnished, that inspection may be provided and that necessary measurements for the record may be made with the minimum of inconvenience to the County or of delay to the Contractor.

4.3.5 The Contractor shall report to the County whenever any reference point is lost or destroyed, or requires relocation because of changes in grades or locations. The Contractor shall replace and accurately relocate all reference points so lost, destroyed or moved.

## ARTICLE 5 – INSURANCE AND BONDS

5.1 General Insurance Requirements, see Exhibit “C”.

5.2 Bond Requirements. The Contractor shall furnish a Payment and Performance Bond(s) in accordance with §255.05 Florida Statutes and the Contract Documents as security for the faithful performance and payment of all its obligations under the Contract Documents. The County Payment and Performance Bond form shall be used. No other forms will be accepted without

## GENERAL CONDITIONS

prior approval from the County. The bond(s) shall be in an amount equal to the Contract Sum.

5.2.1 The Payment and Performance Bond shall have as the surety thereon only such surety company or companies as are authorized to write bonds of such character and amount under the laws of the State of Florida and with a resident agent in the State of Florida. The Attorney-in-Fact or other officer who signs such bond(s) for the surety company must attach a certified copy of its Power-of-Attorney authorizing it to do so.

5.2.2 Qualification of Sureties. The following requirements shall be met by surety companies furnishing the Payment and Performance Bond.

5.2.2.1 The surety shall be rated "A" or better on the Financial Strength Rating (FSR) and Class "X" or better on the Financial Size Category by Best's Rating Center, published by A. M. Best Company, Inc., of Ambest Road, Oldwick, NJ 08858. Financial Strength Rating of companies providing insurance for the Project shall be "A-" Class VIII or better.

5.2.2.2 The surety shall also be listed on the U.S. Department of Treasury (Dept. Circular 570) entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."

5.2.3 If the County, for justifiable cause (such as the filing for liquidation, appointment of receiver to manage said surety business, insolvency, filing petitions or applications for protection or liquidation under federal bankruptcy laws, or other causes adversely affecting the surety's ability to perform under its bonds), becomes dissatisfied with any surety or sureties then upon the bond(s), the Contractor or subcontractor shall, within fifteen (15) days after written notice from the County to do so, substitute acceptable bond(s) in such form and sum, and signed by such other surety or sureties as may be satisfactory to the County. The premiums on the bond(s) shall be paid by the Contractor. No further payments shall be deemed due from County to Contractor nor shall be made until the new surety or sureties shall have furnished acceptable bond(s) to the County.

5.3 Additional Insurance and Bonds. Prior to delivery of the executed contract by County to Contractor, County may require Contractor to furnish such other bonds and such additional insurance in such form and with such sureties or insurers as County may require. If such other bonds or such other insurances are specified by written instructions given prior to opening of bids, the Contractor shall pay the premiums. If subsequent thereto, they shall be paid by the County.

## GENERAL CONDITIONS

### ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

#### 6.1 Work Performed by Contractor.

If indicated in the Contract Documents or solicitation, Contractor shall perform the required percentage of Work stated as measured by cost (equipment and labor, but not materials) within Contractor’s own firm. Failure of the Contractor to perform the required percentage of Work constitutes a material breach of the Contract.

#### 6.2 Construction Office.

County may require, on a job by job basis, that Contractor shall provide and maintain an office, complete with telephone, heat, and air conditioning, that provides adequate space for use by both Contractor’s employees and the County Project Representative. The location of such office shall be on the Project site or as approved by the County’s representative.

#### 6.3 Supervision and Superintendence.

6.3.1 Contractor shall supervise and direct the Work efficiently and with its best skill and attention and in accordance with the Construction Contract. It shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Contractor shall be exclusively responsible to see that the finished Work complies accurately and completely with the Contract Documents.

6.3.2 Contractor shall maintain on the worksite at all times during Work progress a competent resident Superintendent, who shall not be replaced without written notice to County except under extraordinary circumstances. The Superintendent will be the Contractor’s representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the Superintendent shall be as binding as if given to Contractor.

#### 6.4 Labor, Materials, and Equipment.

6.4.1 The Contractor shall provide competent, qualified personnel to lay out its Work from base lines and bench marks established and to perform construction as required by the Contract Documents. It shall at all times maintain good discipline and order at the site.

6.4.2 Contractor shall furnish all material, equipment, transportation, labor, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work, unless otherwise provided in the Contract Documents.

## GENERAL CONDITIONS

- 6.4.3 All materials and equipment incorporated into the Project shall be new except as otherwise provided in the Contract Documents. If required by County, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 6.4.4 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.
- 6.4.5 The Contractor shall be responsible for providing a complete and operable installation of all equipment it furnishes. Any changes or Modifications required to the Contract Documents as a result of the equipment manufacturer's requirements, and all adjustments to all other Work affected thereby, including but not limited to, added engineering costs due to redesign (to be paid to a design professional), structural, mechanical, electrical, heating, ventilation and air conditioning changes shall be borne by the Contractor at no additional cost to the County.
- 6.5 Substitute Materials or Equipment.
- 6.5.1 If the Contract Documents allow Contractor to furnish or use a substitute that is equal to any material or equipment specified, and if Contractor wishes to furnish or use a proposed substitute, it shall submit to County all pertinent information, plans, documents, data and material which may be necessary or desirable for County to evaluate whether the material or equipment is an acceptable substitute. By virtue of such submittal, Contractor thereby warrants and represents that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to the specified and be suited to the same use and be capable of performing the same function as the specified material or equipment.
- 6.5.2 In addition, Contractor shall, prior to the Pre-construction Conference, make written application to County for approval of such substitute material or equipment which shall include a certification as to the satisfaction of the requirements of above Section 6.5.1, and which shall also state whether or not its incorporation in or use in connection with the Project is subject to the payment of any license fee or royalty and shall identify all variations of the proposed substitute from that specified. At the election of County, Contractor shall also have the substitute supplier of material or equipment sign the certification required by this paragraph.
- 6.5.3 No substitute materials or equipment shall be ordered or installed without the written approval of County who will be the sole judge of equality, and County may require Contractor to furnish such other data as it considers appropriate. No materials or equipment shall be ordered or installed without first complying with above Sections 6.5.1 and 6.5.2. The approval by County of any substitute material or equipment shall not diminish the Contractor's or supplier's responsibility for the material or equipment submitted as a substitute under this article.

## GENERAL CONDITIONS

6.5.4 If subsequent to the award of the Contract for the rare occasions that it becomes necessary (because of delays in delivery, strikes, discontinuance of manufacture of items specified or the approved substitutions prior to award) to use an item of equipment or material which is of a different type than the equipment or material specified, or the approved equal thereof, the County, by Modification to the Contract, may authorize the use of such different type equipment or material. Each such different type item (and possibly changes in other parts of the Work related to the item) may be the same, more or less, in cost than the item specified. In its request for use of such different type item, the Contractor shall submit to the County in writing a complete description of the proposed item including dimensions, operational characteristics, changes (if any) that will be required to other related parts of the Work, etc. It shall also submit to the County in writing full information as to costs of the item specified, the cost of the different type item being proposed as well as costs (additional or credits) of changes (if any) to any related parts or the Work. Such information shall be in such form and detail as to permit the County to check, to its satisfaction, the costs involved.

### 6.6 Subcontractors.

6.6.1 Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment) whether initially or as a substitute against whom County may have reasonable objection. A subcontractor or other person or organization identified in writing to County by Contractor prior to the Notice of Award and not objected to in writing by County prior to the Notice of Award will be deemed acceptable to County in most circumstances. Acceptance of any subcontractor, other person or organization by County shall not constitute a waiver of any right of County or to reject defective Work or Work not in conformance with the Contract Documents. If County or after due investigation has reasonable objections to any subcontractor, other person or organization proposed by Contractor after the notice of award, Contractor shall submit an acceptable substitute. Contractor shall not be required to employ any subcontractor, other person, or organization against whom it has reasonable objection. Contractor shall not, without the consent of County, make any substitution of any subcontractor, other person or organization who has been accepted by County unless County determines that there is good cause for doing so.

6.6.2 Contractor shall be fully responsible for all acts and omissions of its subcontractors and of persons and organizations directly or indirectly employed by them and of persons, and organizations for whose acts any of them may be liable to the same extent that it is responsible for the acts and omissions of persons directly employed by it. Nothing in the Contract Documents shall create any contractual relationship between the County and any subcontractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of County to pay or to cause the payment of any monies due any subcontractor or other person or organization, except as may otherwise be required by law. County may furnish to any subcontractor or other

## GENERAL CONDITIONS

person or organization to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done in accordance with the Schedule of Values.

- 6.6.3 The divisions and sections of the Specifications and the identifications of any drawings shall not control Contractor in dividing the Work among subcontractors or delineating the Work to be performed by any specific trade.
- 6.6.4 Contractor shall incorporate the terms and conditions of the Contract Documents into its contracts with subcontractors and shall require subcontractors to do the same with any lower tier contractors or suppliers.
- 6.6.5 All Work performed for the Contractor by a subcontractor shall be pursuant to an appropriate agreement between the Contractor and the subcontractor which shall contain provisions that waive all claims and rights the contracting parties may have against one another for damages caused by fire or other perils provided in accordance with these general conditions to the extent payment is actually made under insurance, except such rights as they may have to the proceeds of such insurance held by the County. The Contractor shall pay each subcontractor a just share of any insurance money received by the Contractor.

### 6.7 Patent Fees and Royalties.

Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of County its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by County in the Contract Documents.

### 6.8 Permits.

- 6.8.1 Contractor shall obtain and pay for all required permits and license, except as otherwise noted, and shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which were applicable at the time of its Bid.
- 6.8.2 Contractor shall obtain and pay for any bonds and insurances that may be required by the various permits.

### 6.9 Laws and Regulations.

The Contractor shall be responsible to know, apply and comply with all applicable federal and state laws, all local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the Work. If Contractor observes that the Contract Documents are at variance therewith, it shall give County written notice thereof, within seventy-two (72) hours of its observation, and any necessary changes shall be

## GENERAL CONDITIONS

adjusted by an appropriate Modification. If Contractor performs any Work it knows or should know is contrary to such laws, ordinances, rules and regulations, and without such notice to County, it shall bear all costs related to bringing the Work into compliance.

6.9.1 **Use of Explosive.** No blasting shall be done except upon approval by the County and the governmental agency or political subdivision having jurisdiction. When the use of explosives is approved by the County as necessary for the execution of the work, the Contractor shall use the utmost care so as not to endanger life or property, and assume responsibility for any such damage resulting from its blasting operations and, whenever directed, the number and the size of the charges shall be reduced. All explosives shall be stored in a secure manner and all such storage places shall be marked clearly "DANGEROUS EXPLOSIVES" and shall be in the care of competent watchmen. All permits required for the use of explosives shall be obtained by the Contractor at its own expense. All requirements of the governmental agency issuing the permit shall be observed.

### 6.10 Taxes.

Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by it in compliance with the law of the place where the Work is to be performed, unless otherwise stipulated elsewhere in the Contact Documents.

### 6.11 Use of Premises.

6.11.1 Contractor shall confine its equipment, the storage of materials and equipment and the operations of its workers to areas permitted by law, ordinances, permits or the requirement of the Contract Documents, and shall not unreasonably encumber the premises with materials or equipment.

6.11.2 Contractor shall not place or maintain, or allow to be placed or maintained, any advertising matter, sign, bill, poster, etc., on or about the site, except those required by law or by the Contract Documents, unless approved by the County, in writing.

6.11.3 Contractor shall not load nor permit any part of any structure to be loaded with weights that will endanger the structure, nor shall it subject any part of the Work to stresses or pressures that will endanger it.

6.11.4 Use of Public Streets. The use of public streets shall be such as to provide a minimum of inconvenience to the public and to other traffic. The contractor shall remove any earth or other excavated material spilled from trucks, and the street cleaned to the satisfaction of the County, and at those times as directed by the County.

6.11.5 Clearing of Site/Parking. There shall be no clearing of the site for purpose of parking equipment or the storage of products/materials. All equipment shall be parked as designated by the County staff.

## GENERAL CONDITIONS

6.11.6 Ground Disturbance. County staff or a professional archaeologist (services retained by the County) must be present on the site during ground disturbance activities for the purpose of monitoring for the presence of archaeological and historical resources. Should such resources be found, the contractor shall immediately cease all, ground disturbance and construction activity and immediately contact the County. The contractor shall not resume construction or site disturbance activities until such time as given approval by the County.

### 6.12 Record Plans.

Throughout the Project, Contractor shall maintain records of all deviations from the Contract Plans and Specifications and shall prepare record drawings showing correctly and accurately all changes and deviations from the Work made during construction to reflect the Project as it was actually constructed. These drawings shall conform to recognized standards of drafting, shall be neat and legible. Contractor shall be liable to County for the cost to develop record drawings upon Contractor's failure or refusal to provide same in a timely manner.

Contractor shall keep one copy of the record of all drawings, specifications, addenda, modifications, and shop drawings at the site in good order and annotated to show all changes made during the construction process. These documents shall be available to County at all times.

### 6.13 Safety and Protection.

The Contractor will be solely responsible for initiating formulating, supervising, reviewing, and overseeing any and all safety precautions, practices, procedures, and programs which are or should be provided in connection with the Work. Contractor will take all necessary or proper precautions for the safety of and will provide the necessary protection to prevent damage, injury, or loss to:

6.13.1 All employees on the work site and any other person who may be affected thereby whether or not such person is involved with the Work.

6.13.2 All the Work and all materials or equipment to be incorporated therein whether in storage on or off the site.

6.13.3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

6.13.4 Care of Trees, Shrubs, and Grass. The contractor shall be fully responsible for maintaining in good condition all cultivated grass plots, trees, and shrubs outside designated work area. Where maintained shrubbery, grass strips, or area must be removed or destroyed incidental to the construction operation, the contractor shall, after completion of the work, replace or restore to the original condition all destroyed or damaged shrubbery or grass areas. Tree limbs which interfere with

## GENERAL CONDITIONS

equipment operation and are approved for pruning shall be neatly trimmed.

- 6.13.5 Damage to Existing Structures and Utilities. The contractor shall be responsible for and make good all damage to pavement beyond the limits of contract work, buildings, telephone or other cables, water pipes, sanitary pipes, or other structures, which may be encountered, whether or not shown on the drawings. Information shown in the contract documents as to the location of existing utilities has been prepared from the most reliable data available to the architect/engineer. This information is not guaranteed, however, and it shall be this contractor's responsibility to determine the location, character, and depth of any existing utilities. It shall assist the utility companies, by every means possible, to determine said locations. Extreme caution shall be exercised to eliminate any possibility of damage to utilities resulting from contractor's activities.
- 6.13.6 Adjustments of Utility Castings, Covers and Boxes. All existing utility castings, including valve boxes, junction boxes, manholes, hand holes, pull boxes, inlets, and similar structures in the areas of grading and paving shall be adjusted by the contractor to bring them flush with the surface of the finished work, if so shown on the drawings. Where these items are not shown on the drawings (to be adjusted by contractor) will be the utility owner's responsibility to adjust them.
- 6.13.7 Notification to Utility Companies. The excavators shall comply with FL 77-153 regarding notification of existing gas and oil pipeline company owners. Evidence of such notice shall be furnished to the County prior to excavating.
- 6.13.8 Barricades and protection of Work. The contractor shall protect its work throughout its length by the erection of suitable barricades and handrails where required. It shall further indicate this work at night by the maintenance of suitable lights or flares, especially along or across thoroughfares. Wherever it is necessary to cross a public walk, it shall provide a suitable safe walkway with hand railings. It shall also comply with all laws or ordinances covering the protection of such work and the safety measures to be employed therein. The contractor shall carry out its work so as not to deny access to private property. All utility access manholes, valves, fire hydrants, and letter boxes shall be kept accessible at all times.
- 6.13.9 Safety. The Contractor shall take the necessary precautions and bear the sole responsibility for the safety of the methods employed in performing the work. The Contractor shall at all times comply with the regulations set forth by federal, state, and local laws, rules, and regulations concerning "OSHA" and all applicable state labor laws, regulations, and standards. The Contractor shall indemnify, defend and hold harmless the County from and against all liabilities, suits, damages, costs, and expenses (including attorney's fees and court costs) which may be imposed on the County because of the Contractor, sub-contractor, or supplier's failure to comply with the regulations.

## GENERAL CONDITIONS

### 6.14 Emergencies.

In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from County is obligated to act at its discretion to prevent threatened damage, injury or loss. It shall give County written notice within seventy-two (72) hours of any significant changes in the Work or deviations from the Contract Documents caused thereby. If Contractor believes that additional work done by it in an emergency which arose from causes beyond its control entitles it to an increase in the Contract Sum or an extension of the Contract Time, it may make a claim therefore as provided in Section 3.3 of the Construction Contract.

### 6.15 Cleaning.

Contractor shall, in accordance with the Contract Documents, keep the Project site free from accumulations of waste materials, rubbish and other debris resulting from the Work, and at the completion of the Work it shall remove all waste materials, rubbish and debris from and about the Project as well as all tools, construction equipment and machinery, and surplus materials and shall leave the site clean and ready for occupancy and use by County. Contractor shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents.

### 6.16 Indemnification. See Article 9.3 of the Construction Contract.

### 6.17 Trench Excavation Safety System and Shoring, Special (Trench Excavation).

The Contractor shall certify that all trench excavation done within its control in excess of five feet in depth complies with OSHA trench safety standards and special shoring requirements contained in 29 C.F.R., S. 1926.650, subpart P, including all subsequent revisions or updates to these standards as adopted by the Department of Labor and Employment Security (DLES). Inspections required by OSHA trench excavation safety standards shall be provided by the Contractor unless provided otherwise in the Contract Documents.

The Contractor also agrees that it has obtained identical certification from its subcontractors that performed trench excavation, and that it will retain such certifications in its files for a period of not less than three years following final acceptance.

The Contractor shall consider all available geotechnical information in its design of the trench excavation safety system.

### 6.18 Immigration Reform and Control Act of 1986.

The Contractor agrees that it does not and will not, during the performance of the Contract, employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.

If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Contract. The Contractor shall be

## **GENERAL CONDITIONS**

responsible for including this provision in all contracts with subcontractors related to this Contract.

### **ARTICLE 7 – WORK BY OTHERS**

#### **7.1 Work by the County.**

County may perform additional work related to the Project by itself, or it may let other direct Contracts therefore. Contractor shall afford the other Contractors who are parties to such direct contracts (or County, if it is performing the additional work itself) reasonable opportunity for the introduction and storage of materials and equipment for the execution of Work, and shall properly connect and coordinate its Work with theirs.

#### **7.2 Contractor's Responsibility.**

7.2.1 If any part of Contractor's Work depends for proper execution or results upon the work of any such other contractor or County, Contractor shall, prior to commencing the Work, inspect and promptly report to County in writing any defects or deficiencies in such Work that render it unsuitable for such proper execution and results. Its failure to so report shall constitute an acceptance of the other work as fit and proper for the relationship to its Work.

7.2.2 Contractor shall do all cutting, fitting and patching of its Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering others work and will only cut or alter others work with the written consent of County and of the other contractors whose work will be affected.

#### **7.3 Work by Others Not Noted.**

If any performance of additional work by other contractors or County is not noted in the Contract Documents prior to the execution of the Contract, written notice thereof shall be given to Contractor prior to starting any such additional Work. If Contractor believes that the performance of such additional Work by County or others involves it in additional expense or entitles it to an extension of the contract time, it may make a claim therefore as provided in Section 3.3 of the Construction Contract.

### **ARTICLE 8 – COUNTY'S RIGHTS AND RESPONSIBILITIES**

#### **8.1 General.**

8.1.1 County shall issue most communications related to administration of the Project to Contractor through the CEI or A/E consultant selected and compensated by the County, if such a person has been contracted on the Project.

## GENERAL CONDITIONS

- 8.1.2 County shall promptly furnish data required under the Contract Documents and make prompt payments to the Contractor in accordance with Contract Documents and applicable law.
- 8.1.3 County's duties in respect to providing lands and easements and possibly engineering surveys to establish reference points, unless otherwise stipulated elsewhere, are set in the Contract Documents.

### ARTICLE 9 – CEI'S (A/E'S) STATUS DURING CONSTRUCTION

#### 9.1 County's Representative.

Construction project administration, inspection, and acceptance of materials and workmanship shall be the responsibility of the County. Unless otherwise provided elsewhere in the Contract Documents, the CEI or A/E shall be the County's designated representative during the construction period. Accordingly, the terms "engineer," "inspector" and other references to the person or persons granting approval, authority, or permission, conducting inspections or tests, observing the Work and so forth, may refer to the CEI or A/E. The duties and responsibilities and the limitations of authority of CEI / A/E as County's representative during construction will be set forth in more detail at the Pre-Construction Conference. Should the County appoint as its representative a party other than the CEI or A/E, County shall give Contractor prompt notice.

#### 9.2 Visits to Site.

The CEI or A/E shall maintain an office at the site for the exclusive purpose of observing the progress of the Work in order to evaluate, in general, whether the Contractor is achieving the applicable performance parameters as generally embodied in the Project's design and communicated via the Contract Documents. The CEI or A/E shall not be responsible either directly or indirectly for the Contractor's initiation, formulation, supervision or overseeing of construction means, methods, techniques, sequences or procedures, or safety precautions, practices, procedures or program employed in connection therewith. These matters shall be within the exclusive discretion, control, and responsibility of the Contractor (s). CEI or A/E shall not in any way be responsible for the failure of Contractor (s) to perform the construction Work in accordance with the Contract Documents. The CEI or A/E shall keep the County informed (i.e. written reports of the progress and quality of Work) and regarding the progress and quality of the Work performed by Contractor including but not limited to responsibility for assisting the County in responding to RFI's, review and certification of Applications for Progress Payment, Application for Final Payment, periodic inspections including a Substantial Completion inspection and Final Completion inspection, as well as review and approval of the Contractor's punchlist.

#### 9.3 Clarifications and Interpretations.

CEI or A/E will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of drawings or otherwise) as may be necessary, which shall be consistent with or reasonable inferable from the overall intent of the Contract Documents. If Contractor believes that a written

## GENERAL CONDITIONS

clarification and interpretation entitles it to an increase in the Contract Sum, the Contractor may make a claim therefore as provided in Section 3.3 of the Construction Contract. No oral clarification or interpretation shall be valid.

### 9.4 Rejecting Defective Work.

9.4.1 CEI or A/E will have authority to disapprove or reject Work which is “defective” (which term is hereinafter used to describe Work that is unsatisfactory, faulty, or defective, or does not meet the requirements of any inspection, test, or approval process utilized by the CEI or A/E, or has been damaged prior to approval of Final Payment or otherwise fails to comply with the Contract Documents). CEI or A/E will also have authority to require special inspection or testing of the Work as provided in Article 13, paragraph 13.4.2 herein, whether or not the Work is fabricated, installed, or completed.

9.4.2 Such authority to disapprove or reject or to require special inspection or testing shall not be construed as giving the CEI or A/E, either directly or indirectly, any power, control or authority over the Contractor’s construction means, methods, techniques, sequences or procedures (or safety precautions, practices, procedures or programs employed in connection therewith) and shall not be construed as giving the CEI or A/E the power, control or authority to stop the Work, but CEI or A/E shall recommend to County to order stopping the Work if it is in the County’s best interest.

### 9.5 Shop Drawings, Change Orders and Payments.

9.5.1 In connection with CEI’s or A/E’s responsibility for shop drawing and samples, see the appropriate section of the Contract Documents related to Shop Drawings and submittals.

9.5.2 CEI or A/E may have responsibility for assisting the County with drafting and approval of Modifications at the County Engineer’s discretion.

9.5.3 In connection with CEI’s responsibilities with respect to assisting the County with processing Applications for Progress Payments, etc., see Article 14 herein.

### 9.6 Resident Project Representatives.

If the County and CEI, or A/E agree, the CEI or A/E will furnish a Resident Project Representative and assistants to assist the CEI or A/E in carrying out its responsibilities at the site. If the CEI or A/E is not authorized by the County to provide a Resident Project Representative, the County will provide a County representative authorized to perform such duties.

### 9.7 Decisions on Disagreements.

9.7.1 The CEI or A/E may, at County’s direction, be the initial interpreter of the requirements of the Contract Documents and the judge of the

## GENERAL CONDITIONS

Contractor's performance thereunder. In its capacity as interpreter and judge, it will exercise its best efforts to insure faithful performance of the Work by Contractor.

Claims, disputes and other matters relating to the execution and progress of the Work, or the interpretation of or performance under the Contract Documents shall be referred to the CEI or A/E for decision, which it will render in writing within a reasonable time.

- 9.7.2 Should Contractor object to any decision by the CEI or A/E with respect to any such claim, dispute or other matter that has been referred to the CEI or A/E, except any which have been waived by the making or acceptance of final payment as provided in Article 14, paragraph 14.11, such objection shall be resolved in accordance with Article 16.

## ARTICLE 10 – CHANGES IN THE WORK

### 10.1 Additions, Deletions, or Revisions by County.

The County, without invalidating the Contract, may order extra Work or make changes by altering, adding to, or deducting from the Work. Modifications to the Contract shall be made in accordance with the Contract Documents. Adjustments to the Contract Sum may require final approval in accordance with County purchasing procedures which may require County Manager or County Council approval. Contractor shall not delay the progress of the Work on account of waiting for County Council approval if the County Engineer has recommended approval by County Council of a change to the Contract Sum in an amount agreeable to the Contractor.

### 10.2 Minor Changes by Engineer.

In giving instructions, the County shall have authority to make minor changes in the Work not involving extra cost or time and not inconsistent with the purposes of the Contract. If Contractor believes that any minor change or alteration authorized by County entitles it to an increase in the Contract Sum, it may make a claim therefore as provided in Section 3.3 of the Construction Contract or Specifications.

### 10.3 Unauthorized Work by Contractor.

Additional Work performed by Contractor without written authorization from the County is at the Contractor's own risk. Contractor shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time without an executed Modification.

### 10.4 Modifications.

- 10.4.1 County and Contractor shall execute Modifications in accordance with the Contract Documents.

## GENERAL CONDITIONS

- 10.4.2 It is the Contractor's responsibility to notify its surety of any changes affecting the Scope of the Work or change in the Contract Sum, and the amount of the applicable bonds shall be adjusted accordingly. Contractor shall furnish proof of such adjustment to County upon request.
- 10.4.3 Upon delivery by the County of a fully executed Modification, the Modification shall be deemed a part of this Contract in all respects and the Contractor shall proceed accordingly upon delivery of a fully executed copy thereof.
- 10.4.4 The Contractor shall not proceed with any part of the Work affected by said Modification until signed by the County. If, however, the delay for said time would cause, in the opinion of the Contractor, a material increase in the cost to the Contractor for completing the Work or would affect the ability to complete the Project within the Contract Time, the Contractor may proceed at its own risk. The failure of the Contractor to proceed during said time shall be deemed its acknowledgment that the delay will not cause any such expense or delay to Contractor.
- 10.4.5 It is the specific intent of the parties that the Work required is to be performed at the firm prices stated and that no extras or changes in the Work, either additions or deletions involving a change in the Contract Sum, shall be undertaken or performed by the Contractor, except as expressly provided by the Contract Documents.

## ARTICLE 11 – CHANGE OF CONTRACT SUM

### 11.1 General.

- 11.1.1 The Contract Sum constitutes the total compensation payable to Contractor for performing the Work.
- 11.1.2 The Contract Sum may only be changed by a duly executed written Modification in accordance with the Contract Documents.
- 11.1.3 Value of Work Covered by Change Order:
- 11.1.3.1 The cost of the Work of any such extra, deleted, or changed Work shall be determined in one or more of the following ways:
- 11.1.3.1.1 By estimate and acceptance in a Lump Sum properly itemized and supported by sufficient substantiating data to permit evaluation; the substantiating itemized data shall include the following:
- i. Labor rates and hours,
  - ii. Itemized material list and price,
  - iii. Construction Equipment hours and rates,

## GENERAL CONDITIONS

- iv. Subcontractors costs itemized as above, and
- v. Any other information that will aid the County and/or CEI or A/E in evaluating the cost and thereby expediting the approval of the Change Order.

11.1.3.1.2 By unit prices named in the Contract or subsequently agreed upon; and

11.1.3.1.3 By cost and percentage or by cost and a fixed fee.

11.1.3.2 If the County, on its own initiative, or upon recommendation of the CEI or A/E, wants any extra Work or change in the Work constituting an alteration, addition to, or deduction from, the work, the CEI or A/E shall prepare a Change Order setting forth the kind, character and quantity of such Work and the CEI or A/E's estimate of the value thereof determined as hereafter provided.

11.1.3.3 In preparing such estimate of value, the CEI or A/E shall consult with the Contractor and ascertain the Contractor's acceptance of said valuation and willingness to perform the additional Work or eliminate the deletions for said sum, which shall be evidenced on said Change Order by the signature of the Contractor or its duly authorized representative. The CEI or A/E shall submit said Change Order to the County and notify the Contractor of the date of said submission.

### 11.1.4 Cost of the Work.

11.1.4.1 For purposes of Change Orders, the term "Cost of the Work" means the sum of all costs necessarily incurred and paid by the Contractor in the proper performance of the work directly required by the Change Order. Except as otherwise may be agreed to in writing by County, such costs shall be in amounts no higher than those prevailing in the locality of the project and shall include only the following items and shall not include any of the costs itemized in Section 11.1.4.7 below.

11.1.4.2 Payroll costs for employees in the direct employ of Contractor in the performance of the Work required by the Change Order under schedules of job classifications agreed upon by County and Contractor. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work required by the Change Order. Payroll costs shall

## GENERAL CONDITIONS

include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto. Such employees shall include Superintendents and foremen at the site. The expenses of performing work after regular working hours, on Sunday or County recognized holidays shall be included in the above to the extent authorized by County.

- 11.1.4.3 Cost of all Materials and Equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless County deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to County. All trade discounts, rebates, and refunds, and all returns from sale of surplus Materials and Equipment shall accrue to County, and Contractor shall make provisions so that they may be obtained.
- 11.1.4.4 If required by County, Contractor shall obtain competitive bids from Subcontractors acceptable to it and shall deliver such bids to County who will then determine with the advice of CEI or A/E, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of cost of the work plus a fee, the cost of the work shall be determined in accordance with Section 11.1.5.1.2.2. All subcontracts shall be subject to the other provisions of the Contract documents insofar as applicable.
- 11.1.4.5 Costs of special consultants (including, but not limited to, engineers, architects, testing laboratories and surveyors) employed for services specifically related to the Work required by the Change Order.
- 11.1.4.6 Supplemental costs including the following:
  - 11.1.4.6.1 The proportion of necessary transportation, traveling, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work required by the Change Order.
  - 11.1.4.6.2 Cost of all appliances, office, and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less market value of such items

## GENERAL CONDITIONS

used but not consumed which remain the property of Contractor.

11.1.4.6.3 The cost of utilities, fuel, and sanitary facilities at the site.

11.1.4.6.4 Cost of premiums for bonds and insurance directly arising from the Work associated with the Change Order which Contractor is required to pay in accordance with the Contract Documents.

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

11.1.4.7.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracts agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor whether at the site or in its principle or branch office for general administration of the work and not specifically included in the schedule, all of which are to be considered administrative costs covered by the Contractor's fee.

11.1.4.7.2 Expenses of Contractor's principle and branch offices other than its office at the site.

11.1.4.7.3 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

11.1.4.7.4 Cost of premiums for all Bonds and for all insurance policies whether or not Contractor is required by the Contract documents to purchase and maintain the same (except as otherwise provided above).

11.1.4.7.5 Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction

## GENERAL CONDITIONS

of defective work, disposal of Materials or Equipment wrongly supplied and making good any damage to property.

11.1.4.7.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in above.

### 11.1.5 Contractor's Fee.

11.1.5.1 The Contractor's fee which shall be allowed to Contractor for its overhead and profit shall be determined as follows:

11.1.5.1.1 A mutually acceptable fixed fee; or if none can be agreed upon,

11.1.5.1.2 A fee based on the following percentages of the various portions of the cost of the work:

11.1.5.1.2.1 For costs incurred for work performed directly by Contractor, Contractor's fee shall be ten (10%) percent;

11.1.5.1.2.2 For costs incurred for work performed by Subcontractor, Contractor's fee shall be five (5%) percent. If a Subcontract is on the basis of cost of the Work plus a fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be ten (10%) percent, and;

11.1.5.1.2.3 No fee shall be payable on the basis of cost itemized under Sections 11.1.4.5 thru 11.1.4.7 above.

11.1.5.1.3 The amount of credit to be allowed by Contractor to County for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined

## GENERAL CONDITIONS

overhead and profit shall be figured on the basis of the net increase, if any.

11.1.6 Allowances. It is understood that Contractor has included in the Contract price all allowances so named in the Contract documents and shall cause the Work so covered to be done by such Material suppliers or Subcontracts and for such sums within the limit of the allowances as CEI or A/E or County Representative may approve. Upon final payment, the Contract price shall be adjusted as required and an appropriate Change Order issued. The Contractor agrees that the original Contract price includes such sums as it deems proper for costs and profit on account of cash allowances. No demand for additional cost or profit in connection therewith shall be allowed.

11.1.7 Unusual Costs. The Contractor may petition the County at any time for an additional rate adjustment on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year. If the Contractor petitions for such an increase, the Contractor shall also petition for a rate reduction on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year; failure to make such petition may be grounds for Contract termination.

The Contractor's request shall contain substantial proof and justification to support the need for the rate adjustment. The County may request from the Contractor, and the Contractor shall provide, such further information as may be reasonably necessary in making its determination. The County shall approve or deny the request, in whole or in part, within sixty (60) Days of receipt of the request and all other additional information required by the County. Any price redetermination shall be solely based upon the documentation provided and the County reserves the right to rescind any price relief granted should the circumstances change and prices go down.

## ARTICLE 12 – CHANGE OF THE CONTRACT TIME

### 12.1 General.

The Contract Time may only be changed by a duly executed written Modification in accordance with the Contract Documents. Any claim by Contractor for extra Contract Time shall be in accordance with Section 3.3 of the Construction Contract.

### 12.2 Delay in Performance of Contract.

12.2.1 The Contractor shall diligently and timely prosecute the Work under the Contract. The Work shall be "complete" only after certification of Final Completion by the County.

## GENERAL CONDITIONS

- 12.2.2 If the Contractor's progress in completing the Work is delayed for any reasons beyond the Contractor's control (including, but not limited to acts, errors, omissions or conduct of the County or CEI or A/E) Contractor's exclusive remedy shall be to request an extension of the time allowed for completion of the Work under this Contract. Under no circumstances, shall Contractor be entitled to claim or recover monetary damages resulting from any such delay, except as specifically allowed by the Contract Documents.
- 12.2.3 The Contractor shall notify the County in writing of such delay and the cause thereof, in accordance with the Construction Contract and Specifications. The CEI or A/E shall then ascertain the facts and the extent of the delay, inform the County, and determine if County agrees to provide an extension of the Contract Time in an amount equal to time lost due to delays beyond the control of the Contractor. If the Contractor objects to any adjustment made by the County under this clause, such dispute shall be determined in accordance with Article 16 of these General Conditions.
- 12.2.4 No such extension of time shall be deemed a waiver by the County of its right to terminate the Contract for abandonment or delay by the Contractor as provided in the Contract, nor shall such extension be deemed to relieve the Contractor from full responsibility for performance of its obligations hereunder.
- 12.2.5 Force Majeure. Neither party shall be liable for any failure or delay in the performance of its obligations under the Contract to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Contract, acts of God, acts of domestic or international terrorism, any virus, bacterium, or other microorganism capable of inducing physical distress, illness, or disease, whether due to a pandemic or otherwise, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and such cause being referred to as a "Force Majeure Event"). Accordingly, the parties further agree that:
- 12.2.5.1 Upon the occurrence of Force Majeure Event, the non-performing party shall be excused from any further performance of those obligations under this Contract that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- 12.2.5.2 Upon the occurrence of a Force Majeure Event, the non-performing party shall notify the other party of the

## GENERAL CONDITIONS

occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party's performance of its obligations and duties pursuant to this Contract. Such notice shall be delivered or otherwise communicated to the other party within three (3) business days following the failure or delay caused by the Force Majeure Event, or as soon as possible after such failure or delay if the Force Majeure Event precludes the non-performing party from providing notice within such time period.

12.2.5.3 In the event of a Force Majeure Event, the time for performance by the parties under the applicable statement of work shall be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of the Contract.

### 12.3 Liquidated Damages for Delay.

All time periods stated in the Contract Documents are of the essence of the Contract. The County and Contractor agree that any damages and losses to the County which will result from the Contractor's failure to complete the Work within the time specified (including any extensions thereof approved by the County) are impossible to accurately determine at the time of executing this Contract. Such sums as detailed in Article 2.3 of the Construction Contract are hereby agreed to be reasonable predictions of damages, which will be sustained and are specifically declared to not constitute a penalty for breach of contract.

## **ARTICLE 13 – WARRANTY AND GUARANTEE; TESTING AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### 13.1 Warranty and Guarantee.

Contractor warrants and guarantees to County that all materials and equipment shall be new unless otherwise specified and of good quality and free from faults or defects and in accordance with the requirements of the Contract Documents and of any inspections, tests or approvals referred to in Section 13.2. All unsatisfactory Work, all faulty or defective Work, and all Work not conforming to the requirements of the Contract Documents at the time of acceptance thereof or of such inspections, tests or approvals shall be considered defective. All defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article 13.

### 13.2 Test and Inspections.

13.2.1 If either the Contract Documents or laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project requires any Work to be inspected, tested, or approved, the Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish County the required certificates or inspection, testing or approval.

## GENERAL CONDITIONS

- 13.2.2 Contractor shall give County timely notice of readiness of the Work for all inspections, tests or approvals. If any such Work required to be inspected, tested or approved is covered without written approval of County, it must, if requested by County, be uncovered for observation, and such uncovering shall be at Contractor's expense unless Contractor has given County timely notice of its intention to cover such Work and County has not acted with reasonable promptness in response to such notice.
- 13.2.3 Observation, inspections, tests or approvals by County or persons other than Contractor shall not relieve Contractor from its obligations to perform the Work in accordance with the requirements of the Contract Documents.
- 13.2.4 The County will provide all required tests necessary for field control of project. Generally, these tests are proctors, densities, bearing value, and concrete quality tests. All mix designs such as asphalt, concrete, or soil cement will be furnished and paid for by the contractor. Any pre-manufactured products such as pipe, inlets, steel, etc., will require a certified mill analysis report. Any tests that have to be repeated because of failure to meet specifications will be deducted from final payment to contractor, costs of tests to be current industry rate as determined by the engineer.

### 13.3 Access to Work.

CEI or A/E and its representatives and other representatives of County shall have unlimited access to the Work. Contractor shall provide proper and safe facilities for such access and observation of Work and also for any inspections or testing thereof by others.

### 13.4 Uncovering Work.

- 13.4.1 If any part of the Work is covered contrary to the instruction of CEI or A/E or County, it must, if directed by CEI or A/E or County, be uncovered for its observation and replaced at Contractor's expense.
- 13.4.2 If any Work has been covered which CEI or A/E or County has not requested to observe prior to this being covered, or if CEI considers it necessary or advisable that covered Work be inspected or tested, Contractor, at CEI's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as CEI or A/E, or County may require that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction, including compensation for additional services, and an appropriate Modification shall be issued. If, however, such Work is found to be in accordance with the Contract Documents, Contractor shall be entitled to request an increase in the Contract Sum or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection,

## GENERAL CONDITIONS

testing and reconstruction if it makes a claim therefore as provided in the Contract Documents.

### 13.5 County May Stop the Work.

If the Work in any respect fails to comply with the Contract Documents, or is causing unsafe conditions, in the opinion of the County, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or if Contractor fails to make prompt payments to subcontractors or for labor, materials or equipment, County may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of County to stop the Work shall not give rise to any duty on the part of County to exercise this right for the benefit of Contractor or any other party.

### 13.6 Correction or Removal of Defective Work.

If required by County prior to approval of Final Payment, the Contractor shall promptly, without cost to County and as specified by County, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by County, remove it from the site and replace it with non-defective Work. If Contractor does not correct such defective Work or remove and replace such rejected Work within a reasonable time, all as specified in a written notice from County, County may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and replacement, including compensation for additional professional services, shall be paid by Contractor, and an appropriate Modification shall be issued. Contractor shall also bear the expenses of making good all work of others destroyed or damaged by its correction, removal, or replacement of its defective Work.

### 13.7 One-Year Warranty.

If, after the approval of Final Payment or such longer period of time as may be prescribed by law or by the terms of any applicable special warranty or guarantee required by the Contract Documents, any Work fails to perform its intended purpose, Contractor shall promptly, without cost to County and in accordance with County's written instructions, either correct such defect, or, if it has been rejected by County, remove it from the site and replace it. If Contractor does not promptly comply with the terms of such instructions, County may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services shall be paid by Contractor. Notwithstanding the above, this provision shall not modify, restrict or impair the County's rights against the Contractor either during or subsequent to the expiration of said period, it being understood that said period establishes an additional remedy to the County in the event any portion of the Work fails after Final Payment. This contractual warranty period shall have no limiting effect on the County's right to make a claim against Contractor for the discovery of any latent defect(s) in the Work discovered before or after the expiration of the warranty period.

## **GENERAL CONDITIONS**

### **13.8 Acceptance of Defective Work.**

If, instead of requiring correction or removal and replacement of failed or defective Work, County prefers to accept it, it may do so. In such case, if acceptance occurs prior to approval of Final Payment, a Modification shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Sum; or, if the acceptance occurs after approval of Final Payment, an appropriate amount, acceptable to County, shall be paid by Contractor to County.

### **13.9 Neglected Work by Contractor.**

If Contractor should fail to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, County, after ten (10) days written notice to Contractor may, without prejudice to any other remedy it may have, make good such deficiencies and the cost thereof (including compensation for additional professional services) shall be charged against Contractor in which case a Modification shall be issued incorporating the necessary revisions in the Contract Documents including appropriate reduction in the Contract Sum. If the payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to County.

## **ARTICLE 14 – PAYMENTS AND COMPLETION**

### **14.1 Schedules.**

At least ten (10) days prior to submitting the first Application for Progress Payment, Contractor shall submit a firm progress schedule, a final schedule of shop drawings submission and a detailed estimate of the Work (Schedule of Values). These schedules shall be satisfactory in form and substance to the CEI or A/E and County. The detailed estimate (Schedule of Values) shall include quantities and unit prices aggregating the Contract Sum and shall subdivide the Work into component parts in sufficient detail to serve as the bases for Progress Payments during construction. Upon approval of such estimate by CEI or A/E and County, it shall be incorporated into the form of Application for Payment furnished by CEI or A/E or County.

### **14.2 Application for Progress Payment.**

14.2.1 Before each Progress Payment request is made, Contractor shall submit to County, CEI or A/E for review an Application for Progress Payment completed and signed by Contractor covering the Work completed as of the date of the application and accompanied by such data and schedules as CEI or A/E or County may require. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Progress Payment shall also be accompanied by such data satisfactory to County as will establish County's title to the material and equipment and protect its interest therein, including applicable insurance.

## GENERAL CONDITIONS

- 14.2.2 Each Application for Progress Payment shall include:
- 14.2.2.1 An affidavit of Contractor stating that all record drawings or installation information is up to date;
  - 14.2.2.2 An affidavit of Contractor stating that all previous Progress Payments received on account of the Work included in prior Applications for Progress Payment have been applied to discharge all of Contractor's obligations to subcontractors, materialmen, laborers, and suppliers and there are no known claims of non-payment by lower tier participants in the Project.
  - 14.2.2.3 Contractor's Release.
- 14.2.3 Failure to provide any of the items above shall be sufficient reason to withhold payment of the current Application for Progress Payment until delivered to the CEI or A/E or County.

### 14.3 Contractor's Warranty of Title.

Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Progress Payment, whether incorporated in the Project or not, will pass to County at the time of incorporation into the Work or payment by the County, whichever is first, free and clear of all liens, claims, security interest and encumbrances.

### 14.4 Approval of Payments.

- 14.4.1 CEI or A/E will, within ten (10) days after receipt of each Application for Progress Payment, either indicate in writing recommendation for its approval of payment and present the application to County, or return the application to Contractor indicating in writing its reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the application. County shall, make necessary arrangements to promptly pay Contractor the amount recommended by the CEI or A/E or return such applications to the CEI or A/E stating objections in writing.
- 14.4.2 CEI or A/E's recommendation for approval of any payment requested in an Application for Progress Payment will constitute a representation by it to County, based on CEI or A/E's on-site observations of the Work in progress and on its review of the Application for Progress Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of its knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning project upon completion; the minor deviations from the Contract Documents correctable prior to completion; the results of any subsequent tests called for in the Contract Documents; and any qualifications stated in its recommendation); and that Contractor is entitled to payment of the

## GENERAL CONDITIONS

amount approved. However, by recommending any such payment CEI or A/E will not thereby be deemed to have represented that it made exhaustive or continuous on-site inspections to check the quality or the quantity of the Work, or that it has reviewed the means, methods, techniques, sequences, and procedures of construction, or that it has made any examination to ascertain how or for what purpose Contractor has used the monies paid or to be paid to it on account of the Contract Sum, or that title to any Work, materials or equipment has passed to County free and clear of any claims by third parties.

14.4.3 CEI or A/E's recommendation for final payment shall constitute a representation by it to County that the conditions precedent to Contractor being entitled to final payment as set forth in Section 14.10.1, have been fulfilled.

14.4.4 CEI or A/E may refuse to recommend the whole or any part of any payment if, in its opinion, it would be incorrect to make such recommendation to County. It may also, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously approved, to such extent as may be necessary in its opinion to protect County, including, but not limited to, loss or damage arising from the fact that:

14.4.4.1 The Work is defective, or completed Work has been damaged requiring correction or replacement,

14.4.4.2 Claims or notices of non-payment have been made or delivered, or there is reasonable cause to believe such may be made or delivered,

14.4.4.3 The Contract Sum has been or should be reduced because of Modifications,

14.4.4.4 County has been required to correct defective Work or complete the Work in accordance with Section 13.9, or;

14.4.4.5 Unsatisfactory prosecution of the Work, including failure to furnish acceptable submittals or to clean up.

### 14.5 Substantial Completion.

14.5.1 The process for determining Substantial Completion is described in Section 4.2.11 through 4.2.17 of the Construction Contract.

14.5.2 County shall have the right to exclude Contractor from the Project (or a specified part thereof) after the date of Substantial Completion, but County shall allow Contractor reasonable access to complete or correct items on the list of incomplete items / punch list.

## GENERAL CONDITIONS

### 14.6 Partial Utilization.

Prior to Final Payment, County may notify Contractor in writing of its desire to use a specified part of the Project which it believes it may use without significant interference with construction of the other parts of the Project. If Contractor agrees, it will certify to County that said part of the Project is Substantially Complete and request County to issue a notice of Substantial Completion for that part of the Project. Within a reasonable time thereafter County, Contractor and CEI or A/E shall make an inspection of that part of the Project to determine its status of completion.

If CEI or A/E does not consider that it is Substantially Complete, it will notify the County and Contractor in writing giving its reasons therefore. If CEI or A/E, County, and Contractor consider that part of the Project to be Substantially Complete, the CEI or A/E will execute and deliver to County and Contractor a notice of that effect, establishing the date of Substantial Completion as to that part of the Project, attaching County shall have the right to exclude Contractor from any part of the Project which CEI or A/E has so certified to be Substantially Complete, but County shall allow Contractor reasonable access to complete or correct items on the list of incomplete items / punch list.

### 14.7 Final Inspection.

Upon written notice from Contractor that the Project is complete, CEI or A/E will make a final inspection with County and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

### 14.8 Final Application for Payment.

After Contractor has completed all Work to the satisfaction of County and delivered all maintenance and operating instructions, schedules, record drawings, guarantees, Consent of Surety, certificates of inspection, and other documents, all as specified in Section 14.9, and as required by the Contract Documents, it may make Application for Final Payment following the procedure in the Contract Documents. The Application for Final Payment shall be accompanied by such data and schedules as County may reasonably require, together with complete and legally effective releases or waivers (satisfactory to County) of all claims arising out of the Contract Documents and the labor and services performed and the material and equipment furnished thereunder, except that, no release or waiver shall be required by any claimant upon receipt by County of a valid Consent of Surety to Final Payment if the requirement of additional releases or waivers would violate 255.05 Florida Statutes.

### 14.9 Items to be Furnished at Final Completion.

#### 14.9.1 Guarantees, Warranties, and Other Documents:

- 14.9.1.1 Assemble one copy of all of the following (if applicable):  
guarantees, warranties, bonds, releases of bonds,

## GENERAL CONDITIONS

affidavits and certificates required by the Contract Documents for various materials, systems, and equipment including copies of all permits and certificates of inspection obtained by any subcontractors or others.

14.9.1.2 Place documents in order, list each document on a transmittal letter or form, and deliver to the County.

### 14.9.2 Extra Stock and Parts:

14.9.2.1 Turn over to County at a location designated by County the spare stock of materials, spare parts, and loose accessories for equipment required by the Specifications, if any.

### 14.9.3 Record Drawings:

The Contractor should have, during the progress of the Work, kept a careful record of all the changes to the Contract Plans. Contractor shall deliver to the County the set of records containing all revisions and changes as approved and built.

### 14.9.4 Record and Information Manual (Warranty manuals as applicable):

14.9.4.1 Prior to final inspection, submit to the County, three (3) copies of a record and information manual.

14.9.4.1.1 Covers: Bind in plastic-covered, loose-leaf binders each bearing a label with the title and date of the Project.

14.9.4.1.2 Sheets: 8½" x 11" except pull-out sheets may be neatly folded to 8½" x 11."

#### 14.9.4.2 Include in manual, the following:

14.9.4.2.1 Table of contents, listing all items;

14.9.4.2.2 List of all subcontractors, sub-subcontractors and suppliers / manufacturers providing materials and equipment fabricated to a special design. State each of the company's, name, address and telephone number;

14.9.4.2.3 Manufacturer's name, type, color and pattern designation as applicable for architectural pre-cast concrete, face brick, concrete masonry units, metal wall panels, storefront work, windows, doors and frames, limestone, doors, finish hardware, ceramic tile, quarry tile, brick

## GENERAL CONDITIONS

pavers, resilient floors, access flooring, carpet, paint, acoustical ceilings and other finish materials as applicable;

14.9.4.2.4 Catalog data for each piece of equipment with serial numbers, data for available accessories maintenance and operating instruction, wiring diagrams and spare parts list, where applicable;

14.9.4.2.5 Name, address, and telephone number of local representative for principal items or equipment; and

14.9.4.2.6 Additional information for record manual required in various sections of the Specifications.

### 14.9.5 Warranty:

14.9.5.1 Obtain, in County's name, the standard written manufacturer's warranty of products furnished under each section of the Specifications, when such warranty is offered in the manufacturer's published product data.

14.9.5.2 All product warranties shall be in addition to and not in lieu of other responsibilities which the Contractor may have.

All product and equipment warranties and guarantees shall be turned over to the County at the time Final Payment is requested.

### 14.10 Approval of Final Payment.

14.10.1 If, on the basis of their observation and review of the Work during construction, their final inspection, and review of the Application for Final Payment, and as required by the Contract Documents, CEI or A/E and County are satisfied that the Work has been completed and Contractor has fulfilled all of its obligations under the Contract Documents, CEI or A/E will, within twenty (20) days after receipt of the Application for Final Payment, indicate recommendation for payment and present the Application for Final Payment to County for payment. Thereupon, CEI or A/E will give written notice to County and Contractor that the Work is acceptable subject to the provision of Section 14.11. Otherwise, it will return the application to Contractor, indicating in writing its reasons for refusing to approve Final Payment, in which case Contractor shall make the necessary corrections and resubmit the application. County shall, within ten (10) days of presentation to it of an approved Application for Final Payment, make arrangements to promptly pay Contractor the amount recommended by CEI or A/E.

## GENERAL CONDITIONS

14.10.2 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of Contractor, and CEI or A/E so confirms, County may, without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract, and if bonds have been furnished as required, the written Consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the CEI or A/E prior to recommendation for such payment. Such payment shall be made under the terms and conditions governing Final Payment, except that it shall not constitute a waiver of claims.

### 14.11 Contractor's Continuing Obligation.

Contractor's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or final payment by CEI, nor the issuance of a notice of Substantial Completion, nor any payment by County to Contractor under the Contract Documents, nor any use or occupancy of the Project or any part thereof by County, nor any act of acceptance by County, nor any failure to do so, nor any correction of defective Work by County, nor the expiration of the one year warranty period, provided in Section 13.7 hereof shall constitute an acceptance of Work not in accordance with the Contract Documents.

### 14.12 Waiver of Claims.

The making and acceptance of Final Payment shall constitute:

14.12.1 A waiver of all claims by County against Contractor other than those arising from faulty or defective Work, or from failure to comply with the requirements of the Contract Documents or the terms of any warranties or special guarantees specified therein.

14.12.2 A waiver of all claims by Contractor against County and CEI or A/E other than those previously made in writing and specifically identified by Contractor as unsettled at the time of the Application for Final Payment.

## ARTICLE 15– SUSPENSION OF WORK AND TERMINATION

### 15.1 County May Suspend Work.

County may, at any time and without cause, suspend the Work in accordance with Section 8.7 of the Construction Contract.

### 15.2 County May Terminate.

15.2.1 County may terminate in accordance with Article 8 of the Construction Contract.

## **GENERAL CONDITIONS**

15.2.2 Where Contractor's services have been so terminated by County terminations shall not affect any rights of County against Contractor then existing or which may thereafter accrue. Any retention or payment of monies by County due Contractor after termination will not release Contractor from liability.

### **15.3 Contractor May Stop Work or Terminate.**

Contractor may terminate the Contract in accordance with Article 8 of the Construction Contract.

## **ARTICLE 16 – SETTLEMENT OF DISPUTES**

### **16.1 General.**

In order to minimize disputes and promptly facilitate settlement, the parties agree that all questions or disputes arising between them shall be settled as follows:

16.1.1 All questions relating to the Work, the performance thereof, or the requirements pertaining thereto, shall be determined by the CEI or A/E and its decision shall be recommended to the County, which shall in its sole discretion make the final decision.

16.1.2 All disputes related to Contractor's claims for increases in Contract Sum or Contract Time shall be governed by the Contract Documents.

16.1.3 Disputes that cannot be resolved by agreement of the Contractor and County shall be governed by the provisions of Article 7 of the Construction Contract unless otherwise agreed in writing.

## **ARTICLE 17 - MISCELLANEOUS**

### **17.1 Giving Notice.**

Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for who it is intended, or to a designated agent or representative of the party to whom notice is being given, or if delivered at or sent by registered or certified mail, postage prepaid to the last business address known to it who gives the notice.

### **17.2 Computation of Time.**

When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

## GENERAL CONDITIONS

### 17.3 General.

17.3.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder and, in particular, but without limitation, the rights and remedies available to County thereunder shall be in addition to and shall not be construed in any way as a limitation of any rights and remedies available to it which are otherwise imposed or available by law, by special guarantee, or by other provisions of the Contract Documents, except for the liquidated damages clause which prohibits the County from seeking actual damages for delay in the event Contractor fails to achieve Substantial Completion within the contractually allotted time.

17.3.2 Should County or Contractor suffer injury or damage to its person or property because of any error, omission or act of the other or of any of its employees or agents or others for whose acts it is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.

### 17.4 Headings.

Heading and subtitles used throughout the contract documents are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.