

UNIT PRICE CONSTRUCTION CONTRACT

FOR Fort Pierce City Marina Reconstruction Phase II Floating Dock Construction

City of Ft. Pierce RFP No. 2013-021



Prepared by:

The City of Fort Pierce Department of Engineering
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Date: Revised February 2014

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AGREEMENT

THIS AGREEMENT (hereinafter the ‘Agreement’ or “Contract”) entered into this ____ day of _____, 2014 by and between the **CITY OF FORT PIERCE, FLORIDA**, a municipal corporation (hereinafter the “CITY”), and **Florida Floats Inc., DBA Bellingham Marine** a Florida corporation, the address of which is **1813 Dennis Street , Jacksonville, Florida 32204** (hereinafter “CONTRACTOR”).

WITNESSETH:

WHEREAS, the CITY wishes to contract for the project identified as **City Marina Reconstruction Phase II ~ Floating Dock Construction RFP No. 2013-021, 1 Avenue A, Fort Pierce, Florida**, and

WHEREAS, the CONTRACTOR has represented to the CITY that its staff is qualified to provide the Work required in this Agreement in a professional, timely manner, and

WHEREAS, the CITY has relied upon the above representations by the CONTRACTOR, and

WHEREAS, the CITY’s Representative and the City Engineer have recommended that an agreement for aforesaid construction be entered into with the CONTRACTOR.

NOW, THEREFORE, for and in consideration of these premises, of the mutual covenants herein set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1 DOCUMENTS INCORPORATED BY REFERENCE

This Contract includes the construction of a Turn Key Marina Facility, consisting of the construction of 147 Concrete Floating Boat Slips inclusive of all electrical, plumbing, lighting, safety equipment, pump out facilities, fire systems, phone, cable TV, potable water, observation decks, gangway accesses, and fencing. Inclusive of this contract is a written 10 year warranty stating as outlined in RFP 2013-021 that the facilities meet the performance criteria and specifications.

Where terms found in Exhibit “E”, “General Conditions” conflict with contract terms the contract terms prevail. The contract includes the construction drawings and the following:

1. Exhibit “A” - Invitation to RFP No. 2013-021
2. Exhibit “B” - Instructions to Bidders
3. Exhibit “C” - Technical Specifications
4. Exhibit “D” - Contractor's Bid
5. Exhibit “E” - General Conditions
6. Exhibit “F” – Notice to Contractors

7. Exhibit "G"- Project Drawings
8. Exhibit "H" Contractor Technical Presentation
9. Exhibit "I" Addendums 1 thru 5
10. Exhibit "J" Final Revised Contract Pricing

All of which are hereby incorporated herein by reference and made a part hereof (hereinafter collectively referred to as the "Contract" or "Contract Documents"). Change Orders issued hereafter, Construction Change Directives, a Direction for a Minor Modification in the Work issued by the CITY, and any other amendments executed by the CITY and the CONTRACTOR shall become and be a part of this Contract. Documents not included or expressly contemplated in this Article 1 do not, and shall not, form any part of this Contract. The Contract Documents are intended to be complementary, and a requirement in one document shall be deemed to be required in all documents.

ARTICLE 2 REPRESENTATIONS OF THE CONTRACTOR

In order to induce the CITY to execute this Contract and recognizing that the CITY is relying thereon, the CONTRACTOR, by executing this Contract, makes the following express representations to the CITY:

2(A) The CONTRACTOR is fully qualified to act as the general contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the general contractor for, and to construct the Project;

2(B) The CONTRACTOR has become familiar with the Project site and the local conditions under which the Project is to be constructed and operated;

2(C) The CONTRACTOR has received, reviewed, and examined all of the documents which make up this Contract, including, but not limited to all plans and specifications, and has found them to the best of its knowledge, to be complete, accurate, adequate, consistent, coordinated and sufficient for construction.

ARTICLE 3 INTENT AND INTERPRETATION

With respect to the intent and interpretation of this Contract, the CITY and the CONTRACTOR agree as follows:

3(A) This Contract (along with its exhibits), together with the Contractor's and Surety's performance and payment bonds for the Project constitute the entire and exclusive agreements between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements.

3(B) Anything that may be required, implied or reasonably inferred by the documents which

make up this Contract, or any one or more of them, shall be provided by the CONTRACTOR for the Contract Price;

3(C) Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between the CITY and any person except the CONTRACTOR;

3(D) When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;

3(E) Wherever this Contract calls for “strict” compliance or conformance with the Contract Documents as to matters other than compliance with time limits, providing an updated schedule, and claim and change order procedures, the term shall mean within tolerances as described specifically in the Contract Documents, or if not specifically described, within industry standards and tolerances for deviation for the specific item or procedure in question;

3(F) The words “include”, “includes”, or “including”, as used in this Contract, shall be deemed to be followed by the phrase, “without limitation”;

3(G) The listing herein of any items as constituting a material breach of this Contract shall not imply that any other, non-listed item will not constitute a material breach of this Contract;

3(H) The CONTRACTOR shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittals and shall give written notice to the CITY of any conflict, ambiguity, error or omission which the CONTRACTOR may find with respect to these documents, before proceeding with the affected work. The express or implied approval by the City Engineer of any shop drawings or other submittals shall not relieve the CONTRACTOR of the continuing duties imposed hereby, nor shall any such approval be evidence of the CONTRACTOR’s compliance with this Contract. The CITY has prepared documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. The CONTRACTOR shall not be liable to the CITY for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the CONTRACTOR recognized, or reasonably should have recognized, such error, inconsistency or omission and knowingly failed to report it to the CITY or City Engineer or his designee. If the CONTRACTOR performs any activity knowing it involves an error, inconsistency or omission which was recognized, obvious, or reasonably should have been recognized, without such notice to the CITY, the CONTRACTOR shall assume responsibility for such performance and shall bear the costs for correction.

3(I) In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, the following shall control:

- (1) As between this document and the plans or specifications, this document shall govern.

- (2) In the case of any conflict, discrepancy or inconsistency among any of the other Contract documents, the CONTRACTOR shall notify the CITY immediately upon discovery of same for resolution.

ARTICLE 4 CONTRACTOR'S PERFORMANCE

The CONTRACTOR shall perform all of the work required, implied or reasonably inferable from this Contract including, but not limited to, the following:

4(A) The CONTRACTOR will complete the entire Work described in the Contract Documents, except as specifically identified therein as the work of other parties, in accordance with the terms herein, Exhibit "A" and the Scope of Work, all as may be amended from time to time;

4(B) The furnishing of any and all required surety bonds and insurance certificate(s) and endorsement(s);

4(C) The provision or furnishing, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, disposal, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits or licenses required for the construction of the Project;

4(D) The creation and maintenance of a detailed and comprehensive copy of the drawings, specifications, addenda, change orders and other modifications depicting all as-built construction. Said items shall be submitted to the CITY, along with other required submittals and electronic files upon Completion of the Project, and receipt of same by the CITY shall be a condition precedent to final payment to the CONTRACTOR. The CONTRACTOR shall prepare and submit final as-built drawings to the CITY.

ARTICLE 5 TIME FOR CONTRACTOR'S PERFORMANCE; DELAYS

5(A) The CONTRACTOR shall commence the performance of this Contract on the date set forth in the Notice to Proceed issued by the City Engineer and shall diligently continue its performance to and until Completion of the Project. **The CONTRACTOR shall accomplish Substantial Completion within the number of calendar days specified on the Notice to Proceed (sometimes hereinafter referred to as the "Contract Time").** By signing this Contract, the CONTRACTOR agrees that the Contract Time is a reasonable time for accomplishing Completion of the Project. There will be no monetary early completion incentive. The CONTRACTOR shall submit its initial progress schedule in accord with Article 10(G) below;

5(B) The CONTRACTOR shall pay the CITY the sum of **\$1000.00** for each and every calendar day of unexcused delays in achieving Substantial Completion beyond the date set forth herein for Substantial Completion. Any sums due and payable hereunder by the CONTRACTOR shall be

payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the CITY, estimated at the time of executing this Contract. When the CITY reasonably believes that Substantial Completion will be inexcusably delayed, the CITY shall be entitled, but not required, to withhold from any amounts otherwise due the CONTRACTOR an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. If and when the CONTRACTOR overcomes the delay in achieving Substantial Completion, or any part thereof, for which the CITY has withheld payment, the CITY shall promptly release to the CONTRACTOR those funds withheld, but no longer applicable, as liquidated damages;

5(C) The term "Substantial Completion", as used herein, shall mean that point at which, as certified in writing by the CONTRACTOR and approved by the CITY, the Project is at a level of completion in strict compliance with this Contract such that the CITY or its designees can enjoy beneficial use or occupancy and can legally occupy, use or operate it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion;

5(D) All limitations of time set forth herein are material and are of the essence of this Contract;

5(E) CONTRACTOR agrees to punctually and diligently perform all parts of the Work at the time scheduled as provided herein. In this connection, CONTRACTOR agrees that it will keep himself continually informed of the progress of the job and will, upon its own initiative, confer with the CITY, City Engineer or his designee, so as to plan its work in coordinated sequence with the work of the CITY and of others and so as to be able to expeditiously undertake and perform its work at the time most beneficial to the entire Project. The CONTRACTOR will be liable for any loss, costs, or damages sustained by the CITY for delays in performing the Work hereunder, other than for excusable delays, as set forth in (F) below, for which CONTRACTOR may be granted a reasonable extension of time;

5(F) If the CONTRACTOR is delayed at any time in the progress of the Work by any separate contractor employed by the CITY, or by changes in the Work, or by labor disputes, fire, unusual delay in transportation, unusually severe weather conditions, unavoidable casualties, delays specifically authorized by the CITY, or by causes beyond the CONTRACTOR's control, avoidance, or mitigation, and without the fault or negligence of the CONTRACTOR and/or subcontractor or supplier at any tier, then the contract time shall be extended by Change Order for such reasonable time, if any, as the CITY may determine that such event has delayed the progress of the Work, or overall completion of the Work if the CONTRACTOR complies with the notice and documentation requirements set forth below.

If the CONTRACTOR is delayed, obstructed, hindered or interrupted for a period of time exceeding ten 10 consecutive calendar days by any act or neglect solely of the CITY, an adjustment shall be made for any increase in the direct cost of performance of this contract (excluding profit, extended home office overhead, incidental or consequential damages or disruption damages) and the Contract modified in writing accordingly. Delays without compensation to the CONTRACTOR as a direct result of an act or neglect of the CITY or City Engineer cannot exceed 60 days in the aggregate over the term of the project. The CONTRACTOR must assert its right under this article by giving written notice to the City Engineer, with a copy to the City Representative, within ten (10) calendar days of the beginning of a delay, obstruction, hindrance or interruption by the CITY. No adjustment shall be

made for any delay, obstruction, hindrance or interruption after final payment under this contract or to the extent that performance would have been so delayed, obstructed, hindered or interrupted by any other cause, including, but not limited to concurrent cause or fault or negligence of the CONTRACTOR, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract. The direct costs described above shall be limited to those direct costs attributable solely to this project and shall be subject to documentation and verification of costs as required by the CITY. If unit prices are established in the Contract Documents or subsequently agreed upon, they shall solely form the basis for cost calculations under any claims for delay. Costs for said delay shall be based solely the schedule of values as established under Subarticle 6(B) that apply directly to the delayed activity.

Any claim for extension of time shall be made in writing to the City Engineer, with a copy to the City Representative, not more than ten (10) calendar days from the beginning of the delay. The notice shall indicate the cause of delay upon the progress of Work. If the cause of the delay is continuing, the CONTRACTOR must give such written notice every ten (10) calendar days and complete cost breakdown for said delay. Within ten (10) calendar days after the elimination of any such delay, the CONTRACTOR shall submit further documentation of the delay and a formal Change Order request for an extension of time for such delay.

The written request for a time extension shall state the cause of the delay, the number of calendar days extension requested, and such analysis and other documentation as is reasonably requested by the City Engineer or his designee to demonstrate a delay in the progress of the Work or the overall project completion. If the CONTRACTOR does not comply with the above notice and documentation requirements, the claim for the delay shall be waived by the CONTRACTOR. The above notice and documentation requirements shall also be a condition precedent to the CONTRACTOR's entitlement to any extension of time.

Extensions of time will be the contractor's primary remedy for any and all delays, obstructions, hindrances, or interference. Payment or compensation, for direct costs only (as set forth above), may be made to the CONTRACTOR for hindrances or delays solely caused by the CITY if such delays or hindrances are within the CITY's ability to control and are not partially caused by the CONTRACTOR or any of its agents, subcontractors or others for whom it is responsible. No payment or compensation will be made for interference, obstructions, hindrances or delays which are not solely caused by the CITY or which arise from the CITY's actions under Article 8.

Without limitation, the CITY's exercise of its rights under the changes clause, regardless of the extent or number of such changes, or the CITY's exercise of any of its remedies or any requirement to correct or re-execute defective work, shall not under any circumstances be construed as delays, hindrances or interference compensable further than as described herein.

ARTICLE 6 CONTRACT PRICE AND CONTRACT PAYMENTS

6(A) Based on Engineering Construction Drawings and Specifications, identified as RFP No. 2013-021, City Marina Rebuild Phase II – Floating Dock Construction, all of which are hereby incorporated herein by reference and made a part hereof, the CONTRACTOR shall provide all

labor and materials required to complete construction as prescribed in the aforementioned Drawings and Specifications, for the sum not to exceed \$ 10,993,417.00

Ten million nine hundred ninety three thousand four hundred seventeen dollars and no cents

Written Amount

6(B) Prior to review of the first payment request, the CONTRACTOR must submit to the CITY and receive the CITY's approval for the schedule of values apportioning the entire contract amount among the different elements of the Project (hereinafter the "Schedule of Values") for purposes of periodic and final payment. The Schedule of Values shall be presented in whatever format, with such detail including labor and material breakout, and backed up with whatever supporting information the CITY requests (See also the specifications for additional information). The CONTRACTOR shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the CONTRACTOR shall constitute a material breach of this Contract. The Schedule of Values will be utilized for the CONTRACTOR's Payment Requests but shall only be so utilized after it has been approved in writing by the CITY;

6(C) The CITY shall pay the contract amount to the CONTRACTOR in accordance with the procedures set forth herein. On or before the tenth (10th) calendar day of each month after commencement of performance, but no more frequently than once monthly, the CONTRACTOR may submit a payment request for the period ending the last calendar day of the previous month (the "Payment Request"). Said Payment Request shall be in such format and include whatever supporting information as may be required by the City Engineer or his designee.

Therein, the CONTRACTOR may request payment for ninety percent (90%) of that part of the contract amount allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if offsite storage is approved in writing by the City Engineer), less the total amount of previous payments received from the CITY. Payment for materials stored offsite shall be at the discretion of the CITY and if approved, the CONTRACTOR shall provide appropriate documentation to substantiate materials are stored in a bonded warehouse or facility, title or other proof of ownership has been transferred to the CITY, and that materials have been purchased and paid for by the CONTRACTOR (copies of paid invoices must be submitted to the City Engineer with payment request). Risk of loss shall be borne by, and insurance must be provided by the CONTRACTOR while in storage and in transit.

Amounts reflected in Change Orders may be included in Payment Requests to the extent they are not in dispute and subject to final approval of cost to the CITY for such changes in the Work.

Each Payment Request shall be signed by the CONTRACTOR and shall constitute the CONTRACTOR's representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with this Contract, and that the CONTRACTOR knows of no reason why payment should not be made as requested.

Thereafter, the City Engineer shall review the Payment Request and may also review the work at the project site or elsewhere to determine whether the quantity and quality of the work is as represented in the Payment Request and is as required by this Contract. The amount of each such payment shall be

the amount approved for payment by the City Engineer, less such amounts, if any, otherwise owing by the CONTRACTOR to the CITY or which the CITY shall have the right to withhold as authorized by this Contract, subject to approval by the CITY. Approval of the CONTRACTOR's Payment Requests shall not preclude the CITY from the exercise of any of its rights as set forth herein below.

The submission by the CONTRACTOR of a Payment Request also constitutes an affirmative representation and warranty that all work for which the CITY has previously paid is free and clear of any lien, claim, or other encumbrance of any person whatsoever. As a condition precedent to payment, the CONTRACTOR shall, as required by the CITY, also finish to the City Engineer properly executed waivers of lien or claim, in a form acceptable to the CITY, from all subcontractors, material men, suppliers or others having lien or claim rights, wherein said subcontractors, material men, suppliers or others having lien or claim rights, shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Project site. Furthermore, the CONTRACTOR warrants and represents that, upon payment of the Payment Request submitted, title to all work included in such payment shall be vested in the CITY, even though responsibility for the care and maintenance of said work rests with CONTRACTOR until substantial completion of contracted project.

6(D) CONTRACTOR will be required to release all CONTRACTOR held retainage for subcontractors within 60 days of subcontractor demobilization in which work performed has been accepted by the CONTRACTOR prior to demobilization. CONTRACTOR shall deliver to the CITY final waivers of lien or claim in a form acceptable to the CITY.

6(E) When payment is received from the CITY, the CONTRACTOR shall promptly pay all subcontractors, material men, laborers and suppliers the amounts they are due for the work covered by such payment.

6(F) Neither payment to the CONTRACTOR, utilization of the Project for any purpose by the CITY nor any other act or omission by the CITY shall be interpreted or construed as an acceptance of any work of the CONTRACTOR not strictly in compliance with this Contract.

After written notice to the CONTRACTOR and a reasonable opportunity to cure, the CITY shall have the right to refuse to make payment, in whole or in part, and, if necessary may demand the return of a portion or the entire amount previously paid to the CONTRACTOR due to:

- (1) The quality of a portion, or all, of the CONTRACTOR's work not being in requirements of this Contract;
- (2) The quantity of the CONTRACTOR's work not being as represented in the CONTRACTOR's Payment Request, or otherwise;
- (3) The CONTRACTOR's rate of progress being such that, in the opinion of the City Engineer or his designee, Substantial Completion may be inexcusably delayed;
- (4) The CONTRACTOR's failure to use Contract funds, previously paid the CONTRACTOR by the CITY to pay CONTRACTOR's project-related obligations including, but not limited to, subcontractors, laborers and material and

equipment suppliers;

- (5) Claims made, or likely to be made, against the CITY or its property for which the CONTRACTOR or its agents or subcontractors or others for whom it is responsible are, or reasonably appear to be at fault;
- (6) Loss caused by the CONTRACTOR;
- (7) The CONTRACTOR's failure or refusal to perform any of its obligations to the CITY after written notice and a reasonable opportunity to cure as set forth above.

In the event that the CITY makes written demand upon the CONTRACTOR for amounts previously paid by the CITY as contemplated in this Subarticle 7(F), the CONTRACTOR shall promptly comply with such demand. The CITY's rights hereunder survive the term of this Contract, are not waived by final payment and/or acceptance, and are in addition to CONTRACTOR's obligations in Article 14 and elsewhere herein.

6(G) When the CONTRACTOR believes that Substantial Completion has been achieved, the CONTRACTOR shall notify the CITY in writing and shall furnish a listing of those matters yet to be finished. The City Engineer or his designee will thereupon conduct a site review to confirm that the Work is in fact substantially complete. Upon confirmation that the CONTRACTOR's work is substantially complete, the City Engineer or his designee will therein set forth the date of Substantial Completion for approval. After approval the CITY will so notify the CONTRACTOR. If the City Engineer or his designee, through his review, fails to find that the CONTRACTOR's work is substantially complete, and is required to repeat all, or any portion, of its Substantial Completion review, the CONTRACTOR shall bear the cost of such repeat site review(s) which cost may be deducted by the CITY from any payment then or thereafter due to the CONTRACTOR. CONTRACTOR upon notification of substantial completion shall provide the CITY with properly executed final waivers of lien or claims for any and all parties' associated with this contract. The CONTRACTOR by submission of the notice of substantial completion shall waive and forever releases any claim against the CITY for additional time, compensation for matters relating to, arising out of or resulting from work included in or affected by this contract.

Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion.

Upon Substantial Completion, the CITY shall pay the CONTRACTOR an amount sufficient to increase total payments to the CONTRACTOR to one hundred percent (100%) of the contract amount with the submission of all pertinent data deemed necessary to verify such payment by the City less any amounts attributable to damages, and less one hundred fifty percent (150%) of the costs, as reasonably determined by the CITY for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims. Such a calculation by the City Engineer of costs for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims shall not bar the CITY from exercise of its rights elsewhere herein, in Article 16 below, or otherwise as provided by law for any incomplete, defective or nonconforming work or claims which are

discovered by the CITY after the date of making such calculation or after the date of any partial or final payment, whether or not such incomplete, defective or nonconforming work or claims were obvious or should have been discovered earlier.

6(G) When the Project is complete and the CONTRACTOR is ready for a final review, they shall notify the CITY Engineer and the CITY Representative thereof in writing. Thereupon, the City Engineer or City Representative will perform a final inspection of the Project. If the City Engineer concurs that the Project is complete and in full accordance with this Contract and that the CONTRACTOR has performed all of their obligations to the CITY hereunder, the CONTRACTOR will furnish a final Request for Payment to the CITY certifying to the CITY that the Project is complete and the CONTRACTOR is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the City Engineer is unable to issue his final Approval for Payment and is required to repeat the final inspection of the Project, the CONTRACTOR shall bear the cost of such repeat inspection(s), which costs may be deducted by the CITY from the CONTRACTOR's final payment;

6(H) In addition to other remedies of the CITY, actual damages may be withheld or collected for failure to meet the date for final completion as set forth in Article 6(B) above.

6(I) The CITY shall, subject to its rights set forth in Subarticle 6 above, endeavor to make final payment of all sums due the CONTRACTOR within thirty (30) calendar days of the final Request for Payment, with the exception of items in dispute or concerning which the City Engineer has exercised any of his rights to investigate or remove.

ARTICLE 7 INFORMATION AND MATERIAL SUPPLIED BY THE CITY

7(A)(i) The CITY shall furnish to the CONTRACTOR, prior to the execution of this Contract, any and all written and tangible material in its possession concerning existing site conditions within the limits of the Project. Such written and tangible material is furnished to the CONTRACTOR only in order to make complete disclosure of such material as being in the possession of the CITY and for no other purpose. By furnishing such material, the CITY does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all;

7(A)(ii)(a) Differing Site Conditions: The CONTRACTOR shall promptly, and before such conditions are disturbed, notify the City Engineer in writing of (1) subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The City Engineer or his designee shall investigate the conditions, and if it is discovered that such conditions do materially so differ and cause an increase or decrease in the CONTRACTOR's cost of, or the time required for, performance of any part of the Work under this Contract, whether or not changed as a result of such conditions, an adjustment shall be made, through negotiation and mutual agreement, and the contract modified in writing accordingly.

7(A)(ii)(b) No claim of the CONTRACTOR under this clause shall be allowed unless the

CONTRACTOR has given the notice required herein: provided, however, the time prescribed therefore may be extended by the CITY.

7(A)(ii)(c) No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if asserted after final payment under this contract.

7(B) The CONTRACTOR is responsible for obtaining **ALL** permits or fees required of the CONTRACTOR by this Contract, or permits and fees customarily the responsibility of the CONTRACTOR. The CONTRACTOR shall coordinate with the CITY and all other authorities having jurisdiction.

7(C) The City Manager, and the City Engineer or his designee shall be the sole authorized representatives of the CITY. Other than in matters of public safety or in time of natural disaster or crisis, the CONTRACTOR shall not take direction or act upon information from any City personnel other than the City's authorized representative(s). This provision shall in no way limit the authority of the Procurement Director as described herein or of the City Legal or Building Inspection Departments.

ARTICLE 8 CEASE AND DESIST ORDER OWNER'S RIGHT TO PERFORM WORK

8(A) In the event the CONTRACTOR fails or refuses to perform the Work, or any separable part thereof, as required herein, or with the diligence that will ensure its proper, timely completion in accordance with the contract documents, the City Engineer may instruct the CONTRACTOR, by written notice, to cease and desist further Work, in whole or in part, or to correct deficient Work. Upon receipt of such instruction, the CONTRACTOR shall immediately cease and desist, or proceed, as instructed by the CITY. In the event the City Engineer issues such instructions to cease and desist, the CONTRACTOR must, within seven (7) calendar days of receipt of the City Engineer's instructions, provide a written, verified plan to eliminate or correct the cause of the City Engineer's order, which plan appears to the City Engineer to be reasonable, actually attainable and in good faith. In the event that the CONTRACTOR fails and/or refuses to provide such a plan or diligently execute an approved plan, then the CITY shall have the right, but not the obligation, to subcontract the Work, or any portion thereof, with its own forces, or with the forces of another contractor, and the CONTRACTOR shall be fully responsible and liable for the costs of the CITY performing such work, which costs may be withheld from amounts due to the CONTRACTOR from the CITY. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the CITY may have against the CONTRACTOR.

If Work completed by the CITY or other contractors affects, relates to, is to be attached onto or extended by later Work of the CONTRACTOR, the CONTRACTOR shall, prior to proceeding with the later Work, and to the extent visible, report any apparent defects or variance from the Contract requirements which would render the CONTRACTOR's later Work not in compliance with the Contract requirements or defective or not in compliance with warranties or other obligations of the CONTRACTOR hereunder.

8(B) The provisions of this article shall be in addition to the CITY's ability to remove portions of the Work from this Contract and complete it separately.

ARTICLE 9

DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR

In addition to any and all other duties, obligations and responsibilities of the CONTRACTOR set forth in the Contract Documents, the CONTRACTOR shall have and perform the following duties, obligations and responsibilities to the CITY:

9(A) Reference is hereby made to the continuing duties set forth in Subarticle 3(H) which are by reference hereby incorporated in this Subarticle 9(A). The CONTRACTOR shall not perform work without adequate plans and specifications, or without, as appropriate, approved shop drawings, or other submittals. If the CONTRACTOR performs work knowing or believing, or if through exercise of reasonable diligence they should have known that such work involves an error, inconsistency or omission in the Contract without first providing written notice to the City Engineer, the CONTRACTOR shall be responsible for such work and shall correct same bearing the costs set forth in Article 3(H) above;

9(B) All work shall strictly conform to the requirements of this Contract. To that end, the CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work, unless otherwise specified in the Contract Documents;

9(C) The work shall be strictly supervised, the CONTRACTOR bearing full responsibility for any and all acts, errors or omissions of those engaged in the work on behalf of the CONTRACTOR, including, but not limited to, all subcontractors and their employees. The CONTRACTOR shall maintain an on-site superintendent while any portion of the Work is being performed;

9(D) The CONTRACTOR hereby warrants that all laborers furnished under this Contract shall be qualified and competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all materials and equipment provided shall be new (unless otherwise specified) and of high quality, that the completed work will be complete, of high quality, without defects, and that all work strictly complies with the requirements of this Contract. Any work not strictly complying with the requirements of this Subarticle shall constitute a breach of this CONTRACTOR's warranty;

9(E) The CONTRACTOR will be responsible for acquiring the permit(s) and calling for routine inspections. The CONTRACTOR will cooperate with and abide by the decision of inspectors having jurisdiction. The CONTRACTOR shall comply with all legal requirements applicable to the work;

9(F) The CONTRACTOR shall employ and maintain at the Project site only competent, qualified full time supervisory personnel, augmented with part time and offsite supervision, to be identified in the approved general conditions. Key supervisory personnel assigned by the CONTRACTOR to this Project are as follows:

NAME	FUNCTION
Kevin Thompson	Vice President

If at any time the City Engineer or his designee reasonably determines that any employee of the contractor is not properly performing the Work in the best interest of the project, or is hindering the progress of the Work, or is otherwise objectionable, the City Engineer shall so notify the CONTRACTOR, whom shall replace the employee as soon as possible, at no increased cost to the CITY.

9(G) The CONTRACTOR must submit to the City Engineer and the City Representative the CONTRACTOR’s schedule for completing the work prior to submittal of the first application for payment. The CITY Engineer will not review any payment request until such schedule has been submitted and approved. Such schedule shall be in a form as specified in the Technical Specifications which shall provide for expeditious and practicable construction of the Project. The CONTRACTOR’s schedule shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total project. Each such revision shall be furnished to the City Engineer and the City Representative. Strict compliance with the requirements of this Subarticle 9(G) shall be a condition precedent to payment to the CONTRACTOR and failure by the CONTRACTOR to strictly comply with said requirements shall constitute a material breach of this Contract.

9(H) The CONTRACTOR shall keep an updated copy of the Contract Documents at the site. Additionally, the CONTRACTOR shall keep a copy of approved shop drawings, other submittals and working as built. All of these items shall be available to the City Engineer during all regular business hours.

9(I) Shop drawings and other such submittals from the CONTRACTOR do not constitute a part of the Contract. The CONTRACTOR shall not do any work requiring shop drawings or other submittals unless such has been approved in writing by the City Engineer or as required by the Contract Documents. All work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents or Contract requirements. However, approval by the City Engineer shall not be evidence that work installed pursuant thereto conforms with the requirements of this Contract, and shall not relieve the CONTRACTOR of responsibility for deviations from the Contract unless the City Engineer has been specifically informed of the deviation by a writing incorporated in the submittals and has approved the deviation in writing.

The delivery of submittals shall constitute a representation by the CONTRACTOR that it has verified that the submittals meets the requirements of the Contract, or will do so, including field measurements, materials, and field construction criteria related thereto.

The City Engineer shall have no duty to review partial submittals or incomplete submittals. The CONTRACTOR shall have the duty to carefully review, inspect, examine, and physically stamp and sign any and all submittals before submission of same to the City Engineer.

9(J) The CONTRACTOR shall maintain the Project site and adjacent areas affected by its work and/or the acts of its employees, material, men, and subcontractors in a reasonably clean condition during performance of the work. Upon substantial completion, the CONTRACTOR shall thoroughly clean the Project site of all debris, trash and excess materials or equipment. If the CONTRACTOR fails to do so, the CITY may complete the cleanup, by its own forces or by separate contract, and shall be entitled to charge the CONTRACTOR for same through the collection or withholding of funds through the mechanisms provided elsewhere herein.

9(K) At all times relevant to this Contract, the CONTRACTOR shall permit the CITY and its consultants to enter upon the Project site and any offsite lay down areas, and to review or inspect the work and any materials on any such site, without formality or other procedure.

9(L) The CONTRACTOR recognizes that the CITY may enter into other contracts to perform work relating to the Project, or to complete portions of the Work itself, the CONTRACTOR shall ensure that its forces reasonably accommodate the forces of the CITY and other contractors hired by the CITY. The CONTRACTOR shall coordinate its schedule with the work of other contractors. If the CONTRACTOR claims that delay or damage results from these actions of the CITY, it shall promptly submit a claim as provided herein.

9(M) PROTECTION OF PERSONS AND PROPERTY.

It shall be the responsibility of the CONTRACTOR to initiate, continue and supervise all safety programs and precautions in the performance of the terms of this Contract. The CONTRACTOR shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to its employees, subcontractors' employees, employees of the CITY and members of the public, the Work itself and unassembled components thereof, and other property at the site or adjacent thereto. As part of the CONTRACTOR's obligations hereunder, the CONTRACTOR shall erect and maintain safeguards, barriers, signs, warnings, etc.

With notice to the CITY Engineer, the CONTRACTOR shall promptly remedy loss or damage to the Work or any person or property described herein caused in whole or in part by the acts of the CONTRACTOR or any subcontractor, sub-subcontractor or material man. This obligation shall be in addition to the requirements of Article 10 herein. The City Engineer may direct the CONTRACTOR to remedy violations of applicable laws, rules, regulations, and interpretations related to safety when and if observed on the site. However, through exercising this authority the City Engineer shall not incur any obligations to monitor, initiate, continue, or supervise safety programs and precautions such to diminish the CONTRACTOR's primary role in same. The City Engineer shall have the right to report suspected safety violations to the Occupational Safety and Health Administration (OSHA).

The CONTRACTOR shall promptly notify the City Engineer upon discovery of any unidentified material which CONTRACTOR reasonably believes to be asbestos, lead, PCB, or other hazardous material, and shall immediately stop work in the affected area of the Project. The CONTRACTOR shall not be responsible for removal or other work with regard to such hazardous material unless otherwise agreed between the City Engineer and the CONTRACTOR. In the case of work stopped hereunder, Article 6 shall apply to claims for delay, hindrance or interference. Work will resume in the affected

area of the Project immediately after such time as the hazardous material has been removed or rendered harmless, as certified by an industrial hygienist to be engaged by the CITY.

ARTICLE 10 INDEMNITY

Except for expenses or liabilities arising from the negligence of the CITY, the CONTRACTOR hereby expressly agrees to indemnify and hold the CITY harmless against any and all expenses and liabilities arising out of the performance or default of this Contract as follows:

10.1 CONTRACTOR shall indemnify and hold harmless, to the maximum extent permitted by law, CITY and its officers and employees, from and against any and all liability, damages, losses, (whether in contract or in tort, including personal injury, accidental death or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), and costs (including reasonable attorney fees, litigation, arbitration, mediation, appeal expenses) to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the CONTRACTOR and persons employed by or utilized by the CONTRACTOR in CONTRACTOR's performance of this Agreement.

10.2 CONTRACTOR's obligation to indemnify and hold harmless shall remain in effect and shall be binding upon CONTRACTOR whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

10.3 CONTRACTOR's failure to comply with this section's provisions shall constitute a material breach upon which CITY may immediately terminate or suspend this Agreement.

ARTICLE 11 CLAIMS BY THE CONTRACTOR

Claims by the CONTRACTOR against the CITY, other than for time extensions covered by Article 5 hereof, are subject to the following terms and conditions:

11(A) All CONTRACTOR claims against the CITY shall be initiated by a written claim submitted to the CITY. Notice of such claim shall be received by the CITY no later than either ten (10) calendar days after the event, or ten (10) calendar days after the first appearance of the circumstances causing the claim, whichever is sooner, and same shall set forth in detail all known facts and circumstances supporting the claim; final costs associated with any claim upon which notice has been filed must be submitted in writing to the CITY within thirty (30) calendar days after notice has been received.

11(B) The CONTRACTOR and the CITY shall continue their performance hereunder regardless of the existence of any claims submitted by the CONTRACTOR including claims set forth in Article 6 hereof;

11(C) In the event the CONTRACTOR discovers previously concealed and unknown site conditions which are materially vary from those typically and ordinarily encountered in the general geographical location of the Project, the Contract Price may, with the approval of the CITY, be modified, either upward or downward, upon the written notice of claim made by either party within ten (10) calendar days after the first appearance to such party of the circumstances. Final costs must be submitted within thirty (30) calendar days after such notice is received by the CITY, unless extended by written agreement of the parties. As a condition precedent to the CITY having any liability to the CONTRACTOR due to concealed and unknown conditions, the CONTRACTOR must give the City Engineer written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the CONTRACTOR to give the written notice and make the claim as provided by this Subarticle 11(C) and Subarticle 7(A)(ii) shall constitute a waiver by the CONTRACTOR of any rights arising out of or relating to such concealed and unknown condition;

11(D) In the event the CONTRACTOR seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the CITY therefore, unless emergency conditions exist, the CONTRACTOR shall strictly comply with the requirements of Subarticle 11(A) above and such claim shall be made by the CONTRACTOR before proceeding to execute any work for which a claim is made. Failure to comply with this condition precedent shall constitute a waiver by the CONTRACTOR of any claim for additional compensation;

11(E) In connection with any claim by the CONTRACTOR against the CITY for compensation in excess of the contract amount, any liability of the CITY for the CONTRACTOR's cost shall be limited to those cost categories set forth in Article 13(E) below.

ARTICLE 12 SUBCONTRACTORS

12(A) Prior to execution of this Contract, the CONTRACTOR shall have identified to the City Engineer, in writing, those parties required to be listed on the proposal form as subcontractors on the Project. Any changes to this list at any time shall be subject to the prior approval of the City Engineer. The City Engineer shall, in writing, state any objections the CITY may have to one or more of such subcontractors. The CONTRACTOR shall not enter into a subcontract with an intended subcontractor to whom the CITY reasonably objects. If at any time the CITY objects to a subcontractor, the CONTRACTOR shall solicit proposals from potential replacements and shall submit the three lowest proposals to the City Engineer, along with the CONTRACTOR's proposed choice as replacement without an increase in bid price.

All subcontracts shall afford the CONTRACTOR rights against the subcontractor which correspond to those rights afforded to the CITY against the CONTRACTOR herein, including those rights of Contract termination as set forth herein below.

12(B) Each and every subcontract related to the Project is hereby assigned by the CONTRACTOR to the CITY, contingent upon the termination of this Contract for default or convenience as provided herein, and only as to those subcontracts which the City Engineer accepts in writing directed to the CONTRACTOR. This contingent assignment is subject to the prior rights of any

surety obligated under a bond related to this Contract. This contingent assignment will operate prospectively from the effective date of assignment, and will not obligate the CITY to any liabilities existing on the effective date of the assignment, or arising from events, acts, failures to act, facts or circumstances existing prior to the effective date of the assignment. The contracts subject to this contingent assignment shall also be further assignable by the CITY, at the CITY's sole option. The CONTRACTOR shall bear the responsibility of notifying subcontractors of this contingent assignment and including it in all subcontracts in connection with the Project.

ARTICLE 13 CHANGE ORDERS

One or more changes to the work within the general scope of this Contract, may be ordered by Change Order. The CITY may also issue written directions for minor changes in the Work and may issue Construction Change Directives, as set forth below. The CONTRACTOR shall proceed with any such changes or Construction Change Directives without delay and in a diligent manner, and same shall be accomplished in strict accordance with the following terms and conditions:

13(A) Change Order shall mean a written order to the CONTRACTOR executed by the CITY after execution of this Contract, directing a change in the Work. A Change Order may include a change in the contract amount (other than a change attributable to damages to the CONTRACTOR for delay as provided in Article 6 hereof) or the time for the CONTRACTOR's performance, or any combination thereof. Where there is a lack of total agreement on the terms of a Change Order or insufficient time to execute a bilateral change, the CITY may also direct a change in the Work in the form of a Construction Change Directive, which will set forth the change in the Work and the change, if any, in the contract amount or time for performance, for subsequent inclusion in a Change Order; Construction Change Directives shall include a not-to-exceed preliminary price, against which the CONTRACTOR may begin billing (subject to the requirements for pay applications elsewhere herein) as the work is performed.

- (1) The CONTRACTOR shall furnish a price breakdown, itemized as required and within the time specified by the City Engineer, with any proposal for a contract modification.
- (2) The price breakdown
 - (a) Must include sufficient detail to permit an analysis of all costs for material, labor, equipment, and subcontracts; and
 - (b) Must cover all work involved in the modification, whether the work was deleted, added or changed.
- (3) The CONTRACTOR shall provide similar price breakdowns to support any amounts claimed for subcontracts.
- (4) The CONTRACTOR's proposal shall include a complete justification for any time extension proposed.

13(B) Any change in the contract amount resulting from a Change Order shall be determined as follows:

- (1) By mutual agreement between the CITY and the CONTRACTOR as evidenced by (a) the change in the Contract Price being set forth in the Change Order, (b) such change in the Contract Price, together with any conditions or requirements relating thereto, being initialed by both parties and (c) the CONTRACTOR's execution of the Change Order; or
- (2) If no mutual agreement occurs between the CITY and the CONTRACTOR, the change in the Contract Price, if any, shall be derived by determining the reasonable actual costs incurred or savings achieved, resulting from revisions in the work. Such reasonable actual costs or savings shall include a component for direct job site overhead and profit but shall not include home-office overhead or other indirect costs or components. The calculation of actual costs shall conform to the markup schedule in Article 13(E) below. Any such costs or savings shall be documented in the format and with such content and detail as the CITY requires.

The CONTRACTOR shall promptly submit such documentation and other backup as the CITY may require in evaluating the actual costs incurred.

13(C) The execution of a Change Order by the CONTRACTOR shall constitute conclusive evidence of the CONTRACTOR's agreement to the ordered changes in the work, this Contract as thus amended, the Contract Price and the time for performance by the CONTRACTOR. The CONTRACTOR, by executing the Change Order, waives and forever releases any claim against the CITY for additional time or compensation for matters relating to, arising out of or resulting from the work included within or affected by the executed Change Order of which the CONTRACTOR knew or should have known;

13(D) The CONTRACTOR shall notify and obtain the consent and approval of the CONTRACTOR's surety with reference to all Change Orders if such notice, consent or approval are required by the CITY, the CONTRACTOR's surety or by law. The CONTRACTOR's execution of the Change Order shall constitute the CONTRACTOR's warranty to the CITY that the surety has been notified of, and consents to; such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

13(E) For the purpose of Change Orders, the following definitions of terms apply:

CONTRACTOR's or Subcontractor's Materials shall include the cost of materials, sales tax, and the cost of all transport. The cost of items listed shall be directly related to the Change Order. Indirect costs not specifically related to the Change Order shall not be considered.

CONTRACTOR's or Subcontractor's Direct Labor Cost shall be limited to the

hourly rate of directly involved workmen, employer contributions towards company standard benefits, pensions, unemployment or social security (if any), and employer costs for paid sick and annual leave.

CONTRACTOR's or Subcontractor's Overhead shall include license fees, bond premiums, supervision, wages of timekeepers and clerks, incidentals, home and field office expense, and vehicle expense directly related to the Project, and all other direct Project expenses not included in the CONTRACTOR's materials, direct labor, and equipment costs.

The allowance for Overhead and Profit shall be limited to the following schedule:

1. For the CONTRACTOR, for any work performed by the CONTRACTOR's own forces, 10% of the Subtotal of Costs to the CONTRACTOR.
2. For the CONTRACTOR, for any work performed by his Subcontractor, 5% of the amount due the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved, for any work performed by their own forces, 10% of their materials and direct labor costs.
4. For each Subcontractor, for work performed by his Sub-subcontractor(s), 5% of the amount due the Sub-subcontractor.

For Change Orders the total cost or credit to the Owner shall be based on the following schedule:

CONTRACTOR's Materials Cost
+ CONTRACTOR's Direct Labor Costs
+ CONTRACTOR's Equipment Costs (includes owned/rental equipment)
+ Applicable Subcontractor Costs
Subtotal of Costs to the CONTRACTOR
+ CONTRACTOR's Overhead and Profit
Total Cost or Credit to the Owner

13(F) Nothing Contained in this Article shall be deemed to contradict or limit the terms of Article 5(E) herein.

ARTICLE 14 DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

14(A) In the event that the CONTRACTOR covers, conceals or obscures its work in violation of this Contract or in violation of an instruction from the City Engineer, such work shall be uncovered and displayed for review by the City Engineer and/or its consultants upon request, and shall be reworked

at no cost in time or money to the CITY;

14(B) if any of the work is covered, concealed or obscured in a manner not covered by Subarticle 14(A) above, it shall, if directed by the City Engineer, be uncovered and displayed for the City Engineer and/or its consultants. If the uncovered work conforms strictly to this Contract, the costs incurred by the CONTRACTOR to uncover and subsequently, replace such work shall be done by the CITY; otherwise, such costs shall be borne by the CONTRACTOR;

14(C) The CONTRACTOR shall, at no cost in time or money to the CITY, correct work rejected by the City Engineer as defective or failing to conform to this Contract. Additionally, the CONTRACTOR shall reimburse the CITY for all testing, review, inspections and other expenses incurred as a result thereof;

14(D) In addition to its warranty obligations set forth elsewhere herein and any manufacturers' warranties provided on the Project, and in addition to other remedies provided herein or by law to the CITY, the CONTRACTOR shall be specifically obligated to promptly correct any and all defective or nonconforming work, whether obvious or after-discovered, for a period of twelve (12) months following Substantial Completion upon written direction from the City Engineer;

14(E) The City Engineer may, but shall in no event be required to, choose to accept defective or nonconforming work. In such event, the Contract Price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming work plus 150% of costs, or (2) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work. If the remaining portion of the unpaid Contract Price, if any, is sufficient to compensate the CITY for the acceptance of defective or nonconforming work, the CONTRACTOR shall, upon written demand from the CITY, pay the CITY such remaining compensation for accepting defective or nonconforming work. The CONTRACTOR shall have an opportunity to correct any defect or non-conformance prior to the CITY taking the above actions. The contractor, upon written notice of any defect or non-conformance, shall have ten (10) calendar days to make corrections, unless the City Engineer agrees that the correction will require more than ten (10) calendar days to correct.

ARTICLE 15 CITY'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

15(A) In addition to the CITY's rights under Article 8 and elsewhere herein, the CITY shall have the right at any time to direct the CONTRACTOR to suspend its performance, or any designated part thereof when in the interests of the CITY. If any such suspension is directed by the CITY, the CONTRACTOR shall immediately comply with same;

15(B) In the event the City Engineer directs a suspension of performance under this Article, through no fault of the CONTRACTOR, if the suspension is lifted other than by termination, the CITY shall pay the CONTRACTOR as full compensation for such suspension the CONTRACTOR's ordinary and reasonable costs, actually incurred and paid, of:

- (1) demobilization and remobilization, including such justifiable costs paid to subcontractors (cost categories and markups limited to those set forth in Article 14(E) above);
- (2) preserving and protecting work in place; and
- (3) approved storage of materials or equipment purchased for the Project, including insurance thereon;
- (4) substantiated extended field office overhead (no home office overhead).

15(C) The CITY may order suspension of the Work in whole or in part for such time as deemed necessary because of the failure of the CONTRACTOR to comply with any of the requirements of this Agreement, and the Agreement's completion date shall not be extended on account of any such suspension of Work.

When the City Engineer orders any suspension of the Work under this subarticle (C), the CONTRACTOR shall not be entitled to any payment for Work which the CONTRACTOR performs after notice of suspension and/or during the suspension period and shall not be entitled to any costs or damages resulting from such suspension.

15(D) The CITY's rights under this Article shall be in addition to those contained elsewhere herein or provided by law.

ARTICLE 16 TERMINATION BY THE CITY

The CITY may terminate this Contract in accordance with the following terms and conditions:

16(A) Termination for Convenience. The CITY may, when in the interests of the CITY, terminate performance under this Contract by the CONTRACTOR, in whole or in part, for the convenience of the CITY. The CITY shall give written notice of such termination to the CONTRACTOR specifying when termination becomes effective. The CONTRACTOR shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the CONTRACTOR shall stop work when such termination becomes effective. The CONTRACTOR shall also terminate outstanding orders and subcontracts for the affected work. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The CITY may direct the CONTRACTOR to assign the CONTRACTOR's right, title, and interest under termination orders or subcontracts to the CITY or its designee. The CONTRACTOR shall transfer title and deliver to the CITY such completed or partially completed work and materials, equipment, parts, fixtures, information, and contract rights as the CONTRACTOR has in their possession or control. When terminated for convenience, the CONTRACTOR shall be compensated as follows:

16(A)(1) The CONTRACTOR shall submit a termination claim to the CITY specifying the

amounts due because of the termination for convenience together with costs, pricing or other data required by the CITY. If the CONTRACTOR fails to file a termination claim within one (1) year from the effective date of termination, the CITY shall pay the CONTRACTOR, an amount derived in accordance with Subarticle (3) below;

16(A)(2) The CITY and the CONTRACTOR may agree to the compensation, if any, due to the CONTRACTOR hereunder;

16(A)(3) Absent agreement to the amount due to the CONTRACTOR, the CITY shall pay the CONTRACTOR the following amounts:

- (c) Contract costs for labor, materials, equipment and other services accepted under this Contract;
- (d) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the CONTRACTOR's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the CONTRACTOR would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
- (e) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subarticle (A) of this Article (if contingent assignment of such contracts has not been elected as provided herein). These costs shall not include amounts paid in accordance with other provisions hereof. This clause is subject to and the CONTRACTOR shall be limited by the CITY's right to direct the replacement of subcontractors under Article 12 (A).

The total sum to be paid the CONTRACTOR under this Subarticle 16(A) shall not exceed the total contract amount, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

16(B) Termination for Cause. If the CONTRACTOR does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the CITY, in addition to any other rights it may have against the CONTRACTOR or others, may terminate the performance of the CONTRACTOR, in whole or in part at the CITY's sole option, and assume possession of the Project site and of all materials and equipment at the site and may complete the work.

In such case, the CONTRACTOR shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the contract price, as it may be modified hereunder, remains after the cost to the CITY of completing the work, including all costs and expenses of every nature incurred, has been deducted by the CITY, such remainder shall belong to the CONTRACTOR. Otherwise, the CONTRACTOR shall pay and make whole the CITY for such cost. This obligation for payment shall survive the termination of the Contract.

In the event the employment of the CONTRACTOR is terminated by the CITY for cause pursuant to this Subarticle 16(B) and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subarticle 16(A) and the provisions of Subarticle 16(A) shall apply.

16(C) Termination for Non-Appropriation. The CITY may also terminate this Contract, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Subarticle 16(A).

16(D) The CITY's rights under this Article shall be in addition to those contained elsewhere herein or provided by law.

ARTICLE 17 INSURANCE

17(A) CONTRACTOR shall be responsible for all damage to person and or property resulting from its negligent acts, reckless or intentional misconduct, errors or omissions or those of their subcontractors, agents or employees in connection with such services and shall be responsible for all parts of its work, both temporary and permanent.

17(A)(1) Evidence of Insurance

CONTRACTOR shall, at its own expense, procure and maintain throughout the term of this Contract, with insurers acceptable to the CITY, the types and amounts of insurance conforming to the minimum requirements set forth herein. CONTRACTOR shall not commence work until the required insurance is in force and evidence of insurance acceptable to the CITY has been provided to, and approved by, the CITY. The CITY at all times reserves the right to request such additional documentation and evidence of insurance as in its sole discretion it may require and the CONTRACTOR hereby agrees to provide same.

With respect to the Workers' Compensation/Employer's Liability Insurance, and Business Auto Liability Insurance, an appropriate Certificate of Insurance (which identifies the project), and signed by an authorized representative of the insurer(s) shall be satisfactory evidence of insurance. With respect to the Commercial General Liability, Watercraft Liability and Pollution Liability Insurance an appropriate Certificate of Insurance (which identifies the project) signed by an authorized representative of the insurer, and copies of the actual additional insured as issued or included in the policy(ies), shall be satisfactory evidence of such insurance.

To the extent CONTRACTOR is permitted to and elects to sub-contract any of the work performed

under this Agreement, CONTRACTOR shall require Subcontractors to maintain any and all insurance required by law. Except to the extent required by law, or as otherwise specifically provided by this Agreement, this Agreement does not establish minimum insurance requirements for Subcontractors. Such insurance required of Subcontractors shall be at the sole discretion of CONTRACTOR.

CONTRACTOR shall provide CITY with renewal or replacement evidence of the insurance no less than five (5) days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.

Notwithstanding the prior submission of a Certificate of Insurance, copies of endorsements, or other evidence initially acceptable to CITY, if requested by CITY, CONTRACTOR shall, within thirty (30) days after receipt of a written request from CITY, provide CITY with a certified copy or certified copies of the policy or policies providing the coverage required by this Article 17. CONTRACTOR may redact or omit, or cause to be redacted or omitted, those provisions of the policy or policies which are not relevant to the insurance required by Article 17.

17(A)(2) Workers' Compensation/Employer's Liability Insurance.

Such insurance shall be no more restrictive than that provided by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than any endorsements required by NCCI or the State of Florida. In addition to coverage for the Florida Workers' Compensation Act, the policy shall be endorsed to include NCCI Endorsements WC 00 01 06A, **"Longshore and Harbor Workers' Compensation Act Coverage Endorsement"** and WC 00 02 01A, **"Maritime Coverage Endorsement"** or their equivalent.

The policy must be endorsed to waive the insurer's right to subrogate against CITY, and its members, officials, officers and employees in the manner which would result from the attachment of the NCCI Waiver Of Our Right To Recover From Others Endorsement (Advisory Form WC 00 03 13) with CITY, and its officials, officers and employees scheduled thereon or a blanket endorsement providing the waiver in the same manner as outlined in the Advisory Form WC 00 03 13

The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One:	"Statutory"	
Part Two:	\$2,000,000	Each Accident
	\$2,000,000	Disease - Policy Limit
	\$2,000,000	Disease - Each Employee

17(A)(3) Marine General Liability Insurance.

Such insurance shall be substantially equivalent to that provided by the latest edition of the

standard Commercial General Liability Form (Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office (ISO) and accepted by the CITY.

CITY and its officials, officers and employees shall be included as an “Additional Insured” on a form no more restrictive than ISO form CG 20 10 (Additional Insured – Owners, Lessees, or Contractor).

The policy must be endorsed to provide CITY with 30 days notice of cancellation.

The limits are to be applicable only to work performed under this contract and shall be those that would be provided with the attachment of the Amendment of Limits of Insurance (Designated Project or Premises) endorsement (ISO Form CG 25 01) to a Commercial General Liability Policy, or a substantially equivalent form accepted by the CITY, with the following minimum limits:

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$2,000,000
Each Occurrence	\$2,000,000

CONTRACTOR shall continue to maintain products/completed operations coverage in the amounts stated above for a period of three (3) years after the final completion of the Work. The insurance shall be on a form acceptable to the CITY, and shall cover those sources of liability which would be covered by Coverage A of, the latest occurrence form edition of the Commercial General Liability Coverage Form (ISO Form CG 00 01), or of the occurrence Products/Completed Operations Liability Coverage Form (ISO Form CG 00 37), as filed for use in the State of Florida by ISO, without any restrictive endorsements other than those which, under an ISO filing, must be attached to the policy (i.e., mandatory endorsements).

17(A)(4) Automobile Liability Insurance.

Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of the standard Business Auto Policy (ISO Form CA 00 01), including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of the Work.

Such insurance shall not be subject to any aggregate limit and the minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

Each Occurrence Bodily Injury and Property Damage Liability Combined	\$2,000,000
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17(A)(5) Watercraft Liability

To the extent watercraft are utilized, the CONTRACTOR shall purchase and maintain, or cause its subcontractors to purchase and maintain, insurance which shall, at a minimum, cover the CONTRACTOR and subcontractor for injuries or damage arising out of the use of all owned, non-

owned and hired watercraft.

The insurance shall include the CITY and its officials, officers and employees as additional insureds.

The limits applicable to watercraft liability (inclusive of any amounts provided by an umbrella or excess policy) shall be:

Each Occurrence/Annual Aggregate	\$5,000,000
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17(A)(6) Pollution Legal Liability

Such insurance shall cover CONTRACTOR for liability resulting from pollution or other environmental impairment arising out of, or in connection with, work performed under this Agreement, or which arises out of, or in connection with this Agreement, including coverage for clean-up of pollution conditions and third party bodily injury and property damage claims arising from pollution conditions. Such insurance shall also include transportation coverage and non-owned disposal site coverage.

Coverage must either be on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis. Such condition can be met through the subsequent renewals for the required policy period.

The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

Each Claim	\$3,000,000
Annual Aggregate	\$3,000,000

The CITY and the CITY's officials, officers, and employees shall be included as an "Additional Insureds" on the policy.

Unless otherwise authorized by the CITY, the Maximum permissible deductible or self-insured retention on the policy shall be \$75,000 per claim. The payment of any amount owed under any deductible or self-insured shall be the sole responsibility of CONTRACTOR and CONTRACTOR shall pay on behalf of the CITY or CITY's officials, officers, agents and employees any deductible or self-insured retention applicable to a claim against the CITY or the CITY's officials, officers, agents and employees.

17(A)(7) General Conditions

The insurance provided by the CONTRACTOR shall apply on a primary basis to and shall not require contribution from, any other insurance or self-insurance maintained by CITY or CITY's members, officials, officers or employees. Any insurance, or self-insurance, maintained by the CITY shall be in excess of, and shall not contribute with, the insurance provided by CONTRACTOR.

Except as otherwise specifically authorized in writing by the CITY, no deductible or self-insured retention for any required insurance provided by CONTRACTOR pursuant to this Agreement will be allowed. To the extent any required insurance is subject to any deductible or self-insured retention (whether with or without approval of CITY), CONTRACTOR shall be responsible for paying on behalf of CITY (and any other person or organization CONTRACTOR has, in this Agreement, agreed to include as an insured for the required insurance) any such deductible or self-insured retention.

Compliance with these insurance requirements shall not limit the liability of CONTRACTOR, its subcontractors, sub-subcontractors, employees or agents. Any remedy provided to the CITY or CITY's members, officials, officers or employees by the insurance provided by CONTRACTOR or the CITY shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of CONTRACTOR) available to the CITY under this Contract or otherwise.

Neither approval nor failure to disapprove insurance furnished by CONTRACTOR shall relieve CONTRACTOR from the responsibility to provide insurance as required by this Contract.

17(A)(8) CONTRACTOR shall deliver to CITY the required certificate(s) of insurance before CITY signs this Agreement.

17(A)(9) In the event CONTRACTOR fails to place or allows any required insurance to lapse, CITY may obtain or renew CONTRACTOR insurance, and CITY may pay all or part of the premiums. Upon demand, CONTRACTOR shall repay CITY all monies paid to obtain or renew the insurance. CITY may offset the cost of the premium against any monies due CONTRACTOR from CITY. CONTRACTOR's failure to obtain, pay for, maintain any required insurance shall constitute a material breach upon which the CITY may immediately terminate or suspend this agreement.

17(A)(10) CONTRACTOR shall not begin work until, CONTRACTOR delivers to the CITY, a written statement, acceptable to the CITY, from CONTRACTOR's insurance agent stating that the insurance agent will provide prior written notice to the CITY of cancellation, termination or nonrenewal of any insurance required under by this ARTICLE 17. The written statement will be signed by an authorized representative of the insurance agent with the appropriate authority to make such commitment on behalf of such agent. Such notice to CITY shall be provided within (five) 5 days of the agent receiving knowledge of any such pending cancellation, termination or nonrenewal. Further, in the same written statement, the agent shall agree to notify the CITY, in writing if they cease to become the agent of record for any insurance policies required by Article 17.

ARTICLE 18 PERFORMANCE AND PAYMENT BONDS

(a) **BONDS REQUIRED:** Prior to issuance of the Notice of Commencement, CONTRACTOR shall provide CITY with a Common Law Performance Bond and a Statutory Payment Bond meeting the standards specified herein, on the forms provided by the CITY, and attached hereto,

with a Power of Attorney Affidavit, each in an amount not less than the Contract price. Within fifteen days after receipt of the Contract, CONTRACTOR shall record in the public records of the county where the improvement is located, the statutory payment bond and common law performance bond as required in Section 255.05(a) Florida Statutes. CONTRACTOR shall provide the CITY with a true copy of the recorded bond(s) as evidence of such recording.

(b) **SURETY'S QUALIFICATIONS:** All bonds required under this Contract, including, but not by way of limitation, any Bid Bond, Common Law Performance Bond or Statutory Payment Bond, shall be written through a reputable and responsible surety bond agency licensed to do business in the State of Florida and with a surety which holds a certificate of authority authorizing it to write surety bonds in Florida meeting the following requirements:

(1) Ratings by A.M. Best

The surety company or corporation shall have minimum ratings by The A.M. Best Company of A- or better with a Financial Size Category of "V" or larger.

(2) Circular 570

In addition to meeting the requirements of paragraph (1) above, the surety shall also comply with the Circular 570 requirements as set forth in this paragraph (2). The surety shall maintain a current certificate of authority as an acceptable surety on Federal Bonds in accordance with U.S. Department of Treasury Circular 570, current revision. If the amount of the bond exceeds the underwriting limitations set forth in the Circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the Circular and the excess risk must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 (3) CFR Section 223.10 - Section 223.111. Further the surety company shall provide the CITY with evidence satisfactory to the CITY, that such excess risk has been protected in an acceptable manner.

(c) **ADDITIONAL OR REPLACEMENT BOND:** It is further mutually agreed between the parties hereto that if, at any time, the CITY shall deem the surety or sureties upon any bond to be unsatisfactory, or if for any reason, such bond (because of increases in the work or otherwise) ceases to be adequate, the CONTRACTOR shall, at their expense within five (5) days after the receipt of notice from the CITY to do so, furnish an additional or replacement bond or bonds in such form, amount, and with such surety or sureties as shall be satisfactory to the CITY. In such event, no further payments to the CONTRACTOR shall be deemed to be due under this Contract until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the CITY.

(d) **CO-SURETIES:** Subject to the following requirements, the bonds required by this Contract may be provided by more than one surety

(1) At least one of the co-sureties shall meet the requirements of Paragraph (b) for the full amount of the bond; and

(2) Each surety shall be jointly and several liable for the full amount of the bond required.

(e) FLORIDA AGENT: The surety company shall have a Florida agent whose name shall be listed in the prescribed space on the forms provided by the CITY for all bonds required by the CITY.

ARTICLE 19 PROJECT RECORDS

All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the CONTRACTOR, or any subcontractor of the CONTRACTOR, shall be made available to the CITY and/or their consultants for inspection and copying upon written request by the CITY. Furthermore, said documents shall be made available, upon request by the CITY, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all drawings, CAD files, electronic files, survey data, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the cost of construction to the CONTRACTOR. The CONTRACTOR shall maintain and protect these documents for no less than three (3) years after Completion of the Project, or for any longer period of time as may be required by law or good construction practice. The CONTRACTOR further agrees to include these provisions in any subcontracts issued by him in connection with this Agreement.

ARTICLE 20 APPLICABLE LAW

The laws of the State of Florida shall govern this Agreement. In any litigation arising under this Agreement, the parties agree to a waiver of the right to a trial before a jury, and all such litigation shall be litigated only in a non-jury hearing in St. Lucie County, Florida.

ARTICLE 21 SUCCESSORS AND ASSIGNS

Each party binds itself, its successors, assigns, executors, administrators, or other representatives to the other party hereto and to successors, assigns, executors, administrators, or other representatives of such other party in connection with all terms and conditions of this Contract. The CONTRACTOR shall not assign this Contract without prior written consent of the CITY.

ARTICLE 22 MISCELLANEOUS PROVISIONS

22(A) Compliance By CONTRACTOR: Nondiscrimination

CONTRACTOR shall comply with all Federal, State and local laws, ordinances, rules and regulations of any authorities throughout the duration of this Agreement. The CONTRACTOR shall be responsible for compliance with any such law, ordinance, rule or regulation, and shall hold CITY harmless and indemnify same in the event of non-compliance. CONTRACTOR agrees to abide

by the requirements under Federal Executive Order Number 11246, as amended, including specifically the provisions of the equal opportunity clause.

22(B) Drug-Free Workplace

CONTRACTOR shall comply with Florida Drug-free Workplace Act, P.S. 287.087. 22.

22(C) State and Local Taxes

Contract prices shall include all applicable state and local taxes.

CONTRACTOR shall indemnify and hold harmless the CITY for any loss, cost or expense incurred by, levied upon or billed to the CITY as a result of a CONTRACTOR's failure to pay any tax of any type due in connection with this Agreement. CONTRACTOR shall ensure that the above sections are include in all subcontracts and sub-subcontracts, and shall ensure withholding on out of state sub and sub-subcontractors to which withholding is applicable.

22(D) Gratuities and Kickbacks

Gratuities. It shall be unethical for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement of a contract or subcontract, or to any solicitation or proposal therefore.

Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor, or to hire any subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

22(E) Any and all notices required to be sent under this Contract or otherwise shall be sent to the following:

CITY:

John R. Andrews, P.E., City Engineer
City of Fort Pierce
P.O. Box 1480
Fort Pierce, FL 34954-1480
Phone: 772-460-2200, x143
Fax: 772-460-6847

CONTRACTOR:

Kevin Thompson, Vice President
Florida Floats dba Bellingham Marine
1813 Dennis Street
Jacksonville, FL 32204
Phone: 904-358-3362 D904-380-3271
Fax: _____

**ARTICLE 23
ENTIRE AGREEMENT**

Any modification to this Agreement must be supported by an additional, articulated consideration, and must either be in writing, executed by the parties hereto, or, if made orally, should be confirmed in writing, which writing should state the consideration which supports the modification. Failure to confirm an oral modification in writing shall constitute a waiver of any claim for additional compensation with regard to the oral modification. Nothing in this Article shall be construed to limit the CITY's authority to issue changes set forth in Article 13 herein.

**ARTICLE 24
SEVERABILITY**

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, this invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this contract are agreed to be severable.

**ARTICLE 25
WAIVER**

Waiver of any breach of any term or condition of this contract shall not be deemed a waiver of any prior or subsequent breach, and shall not entitle any party hereto to any subsequent waiver of any terms hereunder. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement under their several seals the day and year first written above.

WITNESSETH:

CONTRACTOR:

Print name

By:

Signature

Title: _____

Federal Tax ID. No. _____

Print name

Signature

ATTEST:

CITY OF FORT PIERCE

Linda Cox, City Clerk

Linda Hudson, Mayor

APPROVED AS TO FORM AND CORRECTNESS:

Robert V. Schwerer, Esquire, City Attorney