

Schedule F
Construction and Installation Standards and
Requirements

FOR

City of Ft. Pierce RFQ No. – 6052



Prepared by:

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TABLE OF CONTENTS

ARTICLE 1	DOCUMENTS INCORPORATED BY REFERENCE	1
ARTICLE 2	REPRESENTATIONS OF THE COMPANY	1
ARTICLE 3	INTENT AND INTERPRETATION	2
ARTICLE 4	COMPANY'S PERFORMANCE	3
ARTICLE 5	TIME FOR CONTRACTOR'S PERFORMANCE; DELAYS	3
ARTICLE 6	CONTRACT PRICE AND CONTRACT PAYMENTS	5
ARTICLE 7	INFORMATION AND MATERIAL SUPPLIED BY THE CITY	9
ARTICLE 8	DUTIES, OBLIGATIONS, RESPONSIBILITIES OF COMPANY	10
ARTICLE 9	CLAIMS BY THE COMPANY	13
ARTICLE 10	SUBCONTRACTORS	14
ARTICLE 11	CHANGE ORDERS	14
ARTICLE 12	DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK	17
ARTICLE 13	CITY'S RIGHT TO SUSPEND COMPANY'S PERFORMANCE	18
ARTICLE 14	INSURANCE	18
ARTICLE 15	PERFORMANCE AND PAYMENT BONDS	19
ARTICLE 16	MISCELLANEOUS PROVISIONS	19

ARTICLE 1
DOCUMENTS INCORPORATED BY REFERENCE

This Schedule may refer to and incorporate by reference, any definitions, terms, requirements or provisions contained in the Guaranteed Energy and Water Savings Performance Contract and its schedules, attachments, exhibits and appendices. To the extent a definition for a defined term does not appear in the body of this schedule or its attachments, reference is to be made to the definitions contained in the Guaranteed Energy and Water Savings Performance Contract, (“Contract”). If there is a material conflict between this document and any other of the Contract Documents, the conflict shall be resolved by reference to the order of precedence contained in Section 2.1 of the Contract. This Schedule F includes the following Exhibits:

1. Exhibit “A” – Construction Schedule
2. Exhibit “B” – DBE Participation Statement
3. Exhibit “C” – Notice to Contractors
4. Exhibit “D” – Wage Rate Requirements
5. Exhibit “E” - Buy America Certificate of Compliance, Certification Regarding Lobbying, Certification Regarding Debarment

Exhibits A through E listed above are hereby incorporated herein by reference and made a part hereof. 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 COMPANY shall become and be a part of this Schedule F. Documents not expressly referenced in this Article 1 do not, and shall not, form any part of this Contract Schedule. 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 COMPANY

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

2(A) The COMPANY is fully qualified to act as the general contractor for the Work 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 Work;

2(B) The COMPANY has become familiar with the Project sites and Facilities and the local conditions under which the Work is to be constructed and operated; and

2(C) The COMPANY has received, reviewed, and examined all of the documents which make up the Contract Documents, 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 Schedule, the CITY and the COMPANY agree as follows:

3(A) The Contract Documents, together with the Contractor's and Surety's performance and payment bonds for the Work, constitute the entire and exclusive agreements between the parties with reference to the Work, and said Contract Documents supersede any and all prior discussions, communications, representations, understandings, negotiations, or agreements.

3(B) Anything that may be required, implied or reasonably inferred by the Contract Documents which make up this Contract, or any one or more of them, shall be provided by the COMPANY for the Contract Price;

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

3(D) When a word, term, or phrase is used in this Contract Schedule, 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 Schedule, 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;

The COMPANY shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, drawings and other submittals and shall give written notice to the CITY of any conflict, ambiguity, error or omission which the COMPANY may find with respect to these documents, before proceeding with the affected work. The express or implied approval by the CITY Engineer of any drawings or other submittals shall not relieve the COMPANY of the continuing duties imposed hereby, nor shall any such approval be evidence of the COMPANY's compliance with this Contract.

**ARTICLE 4
COMPANY'S PERFORMANCE**

The COMPANY shall perform all of the Work required, implied or reasonably inferable from the Contract Documents, including, but not limited to, the following:

4(A) The COMPANY will complete the Work described in the Contract Documents, except as specifically identified therein as the work of other parties, in accordance with the terms herein, Scope of Work, all as may be amended by written agreement of the Parties 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 upon Completion of the Project, or as otherwise provided in the Contract Documents, and receipt of same by the CITY shall be a condition precedent to final payment to the COMPANY. The COMPANY shall prepare and submit final as-built drawings to the CITY.

**ARTICLE 5
TIME FOR CONTRACTOR'S PERFORMANCE; DELAYS**

5(A) The COMPANY 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 Work. **The COMPANY shall accomplish Final Acceptance within the number of calendar days specified on the Construction Schedule attached hereto as Exhibit A (sometimes hereinafter referred to as the "Contract Time").** By signing this Contract, the COMPANY agrees that the Contract Time is a reasonable time for accomplishing completion of the Work.

5(B) The COMPANY shall pay the CITY the sum of **\$ 750.00** _____ for each and every calendar day of unexcused delays in achieving Final Acceptance beyond the date set forth herein for Final Acceptance. Any sums due and payable hereunder by the COMPANY 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 the Contract; When the CITY reasonable believes that Final Acceptance will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the COMPANY an amount then believed by the CITY to be adequate to recover liquidated damages applicable to

such delays. If and when the Company overcomes the delay in achieving Final Acceptance, for which CITY has withheld payment, the CITY shall promptly release to the COMPANY those funds withheld, but no longer applicable, as liquidated damages;

5(C) The term “Final Acceptance”, shall be as defined in defined in Section 1.1 of the Contract.

5(D)

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

5(E) COMPANY agrees to punctually and diligently perform all parts of the Work at the time scheduled as provided herein. In this connection, COMPANY agrees that it will keep itself 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 COMPANY 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 COMPANY may be granted a reasonable extension of time;

COMPANY agrees to access the Facilities and perform the Work without interfering with the CITY’s use and occupancy of the Facilities. If this requires the COMPANY to perform work on an overtime basis, the COMPANY shall be responsible for all associated costs with performing the Work and the District shall have no obligation or liability for the COMPANY’s increased cost necessary to comply with this provision.

5(F) If the COMPANY is delayed at any time in the progress of the Work by the CITY or 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 COMPANY’s control, avoidance, or mitigation, and without the fault or negligence of the COMPANY and/or COMPANY’S 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 COMPANY complies with the notice and documentation requirements set forth below.

If the COMPANY is delayed, obstructed, hindered or interrupted for a period of time exceeding seven (7) consecutive calendar days by any act or neglect 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 Time modified in writing accordingly. Delays without compensation to the COMPANY as a direct result of an act or neglect of the CITY or City Engineer cannot exceed 45 days in the aggregate over the term of the Project. The COMPANY 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 COMPANY, or for which an equitable adjustment is provided for or excluded under any other term or condition of the 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 form the basis for cost calculations under any claims for delay.

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 COMPANY must give such written notice every ten (10) calendar days. Within ten (10) calendar days after the elimination of any such delay, the COMPANY 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 COMPANY 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 COMPANY's entitlement to any extension of time.

Extensions of time will be the COMPANY'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 COMPANY for hindrances or delays solely caused by the CITY if such delays or hindrances were within the CITY's ability to control and are not partially caused by the COMPANY 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 the Investment Grade Energy Audit Report dated January 14, 2013, identified as Appendix A to the Contract Documents, the COMPANY shall provide all labor and materials required to complete the design, construction and implementation of the CMs as

prescribed in the Contract Documents Schedules B and F, for the sum of **\$5,477,153 (Five Million Four Hundred Seventy-Seven Thousand One Hundred Fifty-Three and zero cents) (“Contract Price”)**.

6(B) Prior to review of the first payment request, the COMPANY 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 Work (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 may reasonably request (See also the specifications for additional information). The COMPANY shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the COMPANY shall constitute a material breach of this Contract. The Schedule of Values will be utilized for the COMPANY’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 COMPANY 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 COMPANY 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 reasonably required by the CITY Engineer or his designee.

Therein, the COMPANY 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 Work, and materials or equipment necessary for the Work 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 COMPANY 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 COMPANY (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 COMPANY while in storage and in transit, for all such materials purchased and paid for by the COMPANY **Hard Cost of Builder’s Risk insurance to be paid by COMPANY and such cost is not to be included inCOMPANY’s fee to be passed on to the City in any way.**

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 COMPANY and shall constitute the COMPANY’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 the Contract Documents, and that the COMPANY 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. Such review of the Payment Request and any related work shall be performed by the CITY Engineer within two (2) weeks from the date the City receives such Payment Request. 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 COMPANY to the CITY or which the CITY shall have the right to withhold as authorized by the Contract Documents, subject to approval by the CITY. Approval of the COMPANY'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 COMPANY 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 COMPANY shall, as required by the CITY, also furnish 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 Work and the Project site. Furthermore, the COMPANY 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 COMPANY until substantial completion of contracted project.

6(D) All payments due COMPANY by CITY under this Contract are subject to the Florida Prompt Payment Act. When payment is received from the CITY, the COMPANY shall promptly pay all subcontractors, material men, laborers and suppliers the amounts they are due for the work covered by such payment.

6(E) Neither payment to the COMPANY, 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 COMPANY not strictly in compliance with the Contract Documents.

After written notice to the COMPANY 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 company due to:

- (1) The quality of a portion, or all, of the COMPANY's work not being in compliance with the requirements of the Contract Documents;
- (2) The quantity of the COMPANY's work not being as represented in the COMPANY's Payment Request, or otherwise;

- (3) The COMPANY's rate of progress being such that, in the reasonable opinion of the CITY Engineer or his designee, Final Acceptance may be inexcusably delayed;
- (4) The COMPANY's failure to use Contract funds, previously paid the COMPANY by the CITY to pay COMPANY's project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
- (5) Claims made, or claims likely to be made as evidenced by a claimant filing a demand, notice of intent to file a claim, including a dully filed mechanic's lien for labor or materials provided or a notice of intent to file a mechanic's lien, against the CITY or its property for which the COMPANY 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 COMPANY;
- (7) The COMPANY'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 Company for amounts previously paid by the CITY as contemplated in this Sub-article 6(F), the Company 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 Company's obligations in Article 14 and elsewhere.

With Exception of the Savings Guarantee, The CITY's rights under the Contract Documents survive the Contract Term and are not waived by final payment and/or acceptance, and are in addition to the CITY'S rights as otherwise provided by law.

Guarantees and equipment warranties required by this Contract shall commence on the date of Final Acceptance, not the date of Substantial Completion.

Upon Final Acceptance, the CITY shall pay the COMPANY an amount sufficient to increase total payments to the COMPANY to one hundred percent (100%) of the Contract amount 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 Work is complete and the COMPANY is ready for a final review, the COMPANY 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 Work. If the CITY Engineer concurs that the Project is complete and in full accordance with the Contract Documents and that the COMPANY has performed all of their obligations to the CITY hereunder, the COMPANY will furnish a final Request for Payment to the CITY certifying to the CITY that the Project is complete and the COMPANY is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to the Contract Documents. If the CITY Engineer reasonably determines that final Approval for Payment should not be issued and is required to repeat the final inspection of the Work, the COMPANY shall bear the cost of such repeat inspection(s), which costs may be deducted by the CITY from the COMPANY'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 Sub-article 6 above, endeavor to make final payment of all sums due the COMPANY within thirty (30) calendar days of the final Request for Payment, with the exception of items disputed in good faith or concerning which the CITY Engineer has reasonably exercised any of his rights to investigate.

ARTICLE 7 INFORMATION AND MATERIAL SUPPLIED BY THE CITY

7(A)(i) The CITY shall furnish to the COMPANY, 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 Work. Such written and tangible material is furnished to the COMPANY 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 COMPANY 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 inherent 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 COMPANY's cost of, or the time required for, performance of any part of the Work under the Contract Documents, 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 COMPANY under this clause shall be allowed unless the COMPANY 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 COMPANY for an adjustment hereunder shall be allowed if asserted after final payment under this Contract.

7(B) The CITY Manager, Deputy 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 COMPANY 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 DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE COMPANY

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

8(A) Reference is hereby made to the continuing duties set forth in Sub-article 3(H) which are by reference hereby incorporated in this Sub-article 8(A). The COMPANY shall not perform work without adequate plans and specifications, or without, as appropriate, approved drawings, or other submittals. If the COMPANY 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 Documents without first providing written notice to the CITY Engineer, the COMPANY shall be responsible for such work and shall correct same bearing the costs set forth in Article 3(H) above;

8(B) All work shall strictly conform to the requirements of the Contract Documents. To that end, the COMPANY 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;

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

8(D) Notwithstanding in addition to any other warranties or assurance provided in the Contract Documents or by applicable law, the COMPANY hereby warrants that all laborers furnished under this Contract shall be qualified and competent to perform the tasks undertaken, that all materials and equipment provided shall be new (unless otherwise specified) and of the

highest quality, that the completed work will be complete and of the highest quality, without defects, and that all work strictly complies with the requirements of the Contract Documents. Any work not strictly complying with the requirements of this Sub-article shall constitute a breach of this COMPANY's warranty;

8(E) Unless otherwise provided for in the Contract Documents, the COMPANY will be responsible for acquiring the permit(s) and calling for routine inspections. The COMPANY will cooperate with and abide by the decision of inspectors having jurisdiction. The COMPANY shall comply with all legal requirements applicable to the work;

8(F) The COMPANY shall employ and maintain at the Project site only competent, qualified full time supervisory personnel, augmented with part time and offsite supervision, approved by the City. Key supervisory personnel assigned by the COMPANY to this Project are as follows:

NAME	FUNCTION
Kevin Faris	Project Manager

If at any time the CITY Engineer or his designee reasonably determines that any employee of the COMPANY 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 COMPANY, whom shall replace the employee as soon as possible, at no increased cost to the CITY.

8(G) The COMPANY must submit to the CITY Engineer and the CITY Representative the COMPANY'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. The COMPANY'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 Sub-article 8(G) shall be a condition precedent to payment to the COMPANY and failure by the COMPANY to strictly comply with said requirements shall constitute a material breach of this Contract.

8(H) The COMPANY shall keep an updated copy of the Contract Documents at the site. Additionally, the COMPANY shall keep a copy of approved drawings and other submittals. All of these items shall be available to the CITY Engineer during all regular business hours.

8(I) Drawings and other such submittals from the COMPANY do not constitute a part of the Contract Documents. The COMPANY shall not do any work requiring 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 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 COMPANY of responsibility for deviations from the Contract Documents 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 COMPANY that it has verified that the submittals meets the requirements of the Contract Documents, 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 COMPANY 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.

8(J) The COMPANY 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 COMPANY shall thoroughly clean the Project site of all debris, trash and excess materials or equipment. If the COMPANY 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 COMPANY for same through the collection or withholding of funds through the mechanisms provided elsewhere herein.

8(K) At all times relevant to this Contract, the COMPANY 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.

8(L) PROTECTION OF PERSONS AND PROPERTY.

It shall be the responsibility of the COMPANY to initiate, continue and supervise all safety programs and precautions in the performance of the terms of this Contract. The COMPANY shall take reasonable and necessary 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 COMPANY's obligations hereunder, the COMPANY shall erect and maintain safeguards, barriers, signs, warnings, etc.

With notice to the CITY Engineer, the COMPANY 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 COMPANY 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 COMPANY 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 COMPANY'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).

ARTICLE 9 CLAIMS BY THE COMPANY

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

9(A) All COMPANY 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.

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

9(C) In the event the COMPANY 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 COMPANY due to concealed and unknown conditions, the COMPANY must give the CITY Engineer written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the COMPANY to give the written notice and make the claim as provided by this Sub-article 11(C) and Sub-article 7(A)(ii) shall constitute a waiver by the CONTRACTOR of any rights arising out of or relating to such concealed and unknown condition;

9(D) In the event the COMPANY 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 COMPANY shall strictly comply with the requirements of Sub-article 11(A) above and such claim shall be made by the COMPANY 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 COMPANY of any claim for additional compensation;

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

**ARTICLE 10
SUBCONTRACTORS**

10(A) Upon execution of this Contract, the COMPANY shall identify to the CITY Engineer, in writing, those parties COMPANY intends on using 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 COMPANY 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 COMPANY shall solicit proposals from potential replacements and shall submit the names of the replacement subcontractor to the City for approval without an increase in the price of the Work.

All subcontracts shall afford the COMPANY rights against the subcontractor which correspond to those rights afforded to the CITY against the COMPANY precisely as those rights are contained in the Contract Documents, including those rights of Contract termination as set forth herein below.

10(B) Each and every subcontract related to the Project is hereby assigned by the COMPANY to the CITY, contingent upon the termination of this Contract for default as provided herein, and only as to those subcontracts which the CITY Engineer accepts in writing directed to the COMPANY. 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 COMPANY shall bear the responsibility of notifying subcontractors of this contingent assignment and including it in all subcontracts in connection with the Project.

**ARTICLE 11
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 COMPANY 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:

11(A) Change Order shall mean a written order to the COMPANY 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 Price (other than a change attributable to damages to the COMPANY for delay as provided in Article 6 hereof) or the time for the COMPANY'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 COMPANY may begin billing (subject to the requirements for pay applications elsewhere herein) as the work is performed.

- (1) The COMPANY 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 COMPANY shall provide similar price breakdowns to support any amounts claimed for subcontracts.
- (4) The COMPANY's proposal shall include a complete justification for any time extension proposed.

11(B) Any change in the Contract Price resulting from a Change Order shall be determined as follows:

- (1) By mutual agreement between the CITY and the COMPANY 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;
 - (c) the COMPANY's execution of the Change Order; or
- (2) If no mutual agreement occurs between the CITY and the COMPANY, 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 COMPANY shall promptly submit such documentation and other backup as the CITY may require in evaluating the actual costs incurred.

11(C) The execution of a Change Order by the COMPANY shall constitute conclusive evidence of the COMPANY's agreement to the ordered changes in the work, this Contract as thus amended, the Contract Price and the time for performance by the COMPANY. The COMPANY, 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 COMPANY knew or should have known;

11(D) The COMPANY shall notify and obtain the consent and approval of the COMPANY's surety with reference to all Change Orders if such notice, consent or approval are required by the CITY, the COMPANY's surety or by law. The COMPANY's execution of the Change Order shall constitute the COMPANY'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.

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

COMPANY'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.

COMPANY'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.

COMPANY'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 COMPANY's materials, direct labor, and equipment costs.

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

1. For the COMPANY, for any work performed by the COMPANY's own forces, 15% of the Subtotal of Costs to the COMPANY.
2. For the COMPANY, for any work performed by his Subcontractor, 6% of the amount due the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved, for any work performed by their own forces, 15% of their materials and direct labor costs.
4. For each Subcontractor, for work performed by his Sub-subcontractor(s), 6% 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:

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

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

ARTICLE 12 DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

12(A) In addition to its obligations under the provisions of Section 4.2(C) of the Contract, in the event that the COMPANY covers, conceals or obscures its work in violation of the Contract Documents 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;

12(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 the Contract Documents, the costs incurred by the COMPANY to uncover and subsequently, replace such work shall be done by the CITY; otherwise, such costs shall be borne by the COMPANY;

12(C) The COMPANY 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 the Contract Documents.

Additionally, the COMPANY shall reimburse the CITY for all retesting, review, re-inspections and other expenses incurred as a result of the defective, failing or non-conforming work.

ARTICLE 13 CITY'S RIGHT TO SUSPEND COMPANY'S PERFORMANCE

13(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 COMPANY 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 COMPANY shall immediately comply with same;

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

- (1) demobilization and remobilization, including such justifiable costs paid to subcontractors;
- (2) preserving and protecting work in place; and
- (3) approved storage of materials or equipment purchased for the Project, including insurance thereon;

13(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 COMPANY 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 COMPANY shall not be entitled to any payment for Work which the COMPANY 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.

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

ARTICLE 14 INSURANCE

14(A) COMPANY 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 its subcontractors, agents or employees in connection with such services and shall be responsible for all parts of its work, both temporary and permanent.

14(B) (1) COMPANY shall, at its own expense, procure and maintain throughout the term of this Contract, with insurers reasonably acceptable to the CITY, the types and amounts of insurance conforming to the minimum requirements required by in Section 12 of the Contract.

14(C) The CITY and COMPANY waive all rights against (1) each other and any of their subcontractors, subcontractors' agents, and employees each of the other, and (2) the separate contractors if any, and any of their subcontractors, subcontractors' agents, and employees, for damages caused by fire or other causes of loss to the event covered by property insurance obtained pursuant to subarticle 17(C) (Builder's Risk), or other property insurance applicable to the Work, provided such waiver does not compromise coverage under such insurance coverage. The CITY or COMPANY, as appropriate, shall require separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The required Builder's Risk policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 15 PERFORMANCE AND PAYMENT BONDS

BONDS REQUIRED: Performance and Payment Bonds shall be as provided for in Section 13 of the Contract.

ARTICLE 16 MISCELLANEOUS PROVISIONS

16(A) Compliance By COMPANY: Nondiscrimination

In the performance of the Work, COMPANY shall comply with all Federal, State and local laws, ordinances, rules and regulations of any authorities throughout the duration of this Agreement. The COMPANY shall be responsible for compliance with any such law, ordinance, rule or regulation, and shall hold CITY harmless and indemnify same, as provided in Section 9 of the Contract, in the event of non-compliance. COMPANY agrees to abide by the requirements under Federal Executive Order Number 11246, as amended, including specifically the provisions of the equal opportunity clause.

16(B) Drug-Free Workplace

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

16(C) State and Local Taxes

Company shall be responsible for, as a cost of the Work, the payment of all state and local taxes.

16(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.

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

CITY:

Jack 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:

Andre Leblanc, Director, Operations
BGA, Inc.
3101 W. Dr. MLK Jr. Blvd., Suite 110
Tampa, FL 33607
Phone: 813-375-3469
Fax: 813-375-3400