

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA

CITY OF PALM COAST, a Florida
governmental entity,

Plaintiff,

CASE NO.: 2022 CA 000773

vs.

BBI CONSTRUCTION MANAGEMENT, INC.,
a Florida profit corporation; NO FAULT LLC, a
foreign limited liability company; S&ME, INC.,
a foreign profit corporation; and WESTFIELD
INSURANCE COMPANY, a foreign profit
company,

Defendants.

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PLAINTIFF'S COMPLAINT

Plaintiff, City of Palm Coast, hereby sues Defendants, BBI Construction Management, Inc., No Fault LLC, S&ME, Inc., and Westfield Insurance Company, and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. This is an action for damages exceeding \$30,000.00, exclusive of interest, fees, and costs.
2. Plaintiff, City of Palm Coast ("Plaintiff"), is a city located in Flagler County, Florida.
3. Defendant, BBI Construction Management, Inc. ("BBI"), is a Florida profit corporation with its principal place of business located at 4639 NW 53rd Avenue, Gainesville, Florida 32653. BBI is licensed to do business in the state of Florida.

4. Defendant, No Fault LLC (“No Fault”), is a foreign limited liability company with its principal place of business located at 11515 Vanstory Drive, Suite 100, Huntersville, North Carolina 28078. No Fault is licensed to do business in the state of Florida.

5. Defendant, S&ME, Inc. (“S&ME”), is a foreign profit corporation with its principal place of business located at 2724 Discovery Drive, Suite 120, Raleigh, North Carolina 27616. S&ME is licensed to do business in the state of Florida.

6. Defendant, Westfield Insurance Company (“Westfield”), is a foreign profit corporation with its principal place of business located at One Park Circle, PO Box 5001, Westfield Center, Ohio, 44251. Westfield is licensed to do business in the state of Florida.

7. Venue and jurisdiction are proper in Flagler County, Florida pursuant to Sections 48.193(1)(a) and 47.011, *Florida Statutes*, as Plaintiff’s causes of action accrued in Flagler County, Florida, and Defendants conduct business in Flagler County, Florida.

FACTUAL BACKGROUND

8. Plaintiff is the owner of real property located at 18 Florida Park Drive North, Palm Coast, Florida 32164, which is known and referred to as James F. Holland Park (“Holland Park”).

9. In early 2018, Plaintiff sought to design and construct additional improvements to Holland Park, including but not limited to, expansion of the existing playground, replacement of the bocce ball courts, sports activity lightening, construction of a maintenance building, and other various renovations (the “Project” or the “Holland Park Phase 2 Improvements Project”).

10. Inclusive in the Holland Park Phase 2 Improvements Project was the design and construction of an interactive water feature (the “Splash Pad”).

11. The City entered into an agreement with S&ME to act as the designer of record for the Project. See S&ME Contract, attached and incorporated hereto as **Exhibit “A”**.

12. On or about February 19, 2018, Plaintiff and BBI entered into an agreement for BBI to act as the construction manager for the Project. See BBI Contract, attached and incorporated hereto as **Exhibit “B”**.

13. Pursuant to its Contract, BBI provided pre-construction services in addition to construction management services. Inclusive in these pre-construction services was scheduling and conducting meetings to discuss procedures, progress, coordination, and scheduling of the work to be performed. Relevant here, BBI was also to advise the City on selection of materials and provide recommendations on factors related to construction quality and maintainability/durability. See **Exhibit “B”**.

14. On or about April 5, 2019, Westfield issued a Payment and Performance Bond to BBI with regard to the Project. See Bond, attached and incorporated as **Exhibit “C”**.

15. Thereafter, BBI entered into an Agreement with No Fault for No Fault to act as the poured-in-place (“PIP”) supplier and subcontractor for the Splash Pad. See No Fault Purchase Order, attached and incorporated hereto as **Exhibit “D”**.

16. Pursuant to S&ME’s design, the Splash Pad is composed of, among other components, a compacted subgrade, a concrete sub deck, and poured-in-place (“PIP”) deck surfacing.

17. The Splash Pad uses an onsite reservoir tank, as well as a filtration and chemical system during operation.

18. During operation, water is directed from the tank, to the filtration and chemical system, and out spray nozzles and other water feature elements on the Splash Pad.

19. For the Splash Pad to perform properly, among other things, the water must return back to the reservoir tank through deck drains and a subterranean piping system.

20. On April 22, 2021, the Splash Pad reached substantial completion, and on May 14, 2021, the Splash Pad was open for public use.

21. Thereafter, the City began noticing issues with the Splash Pad. The City promptly notified S&ME, as the designer of record, and BBI, as the construction manager. Unfortunately, the issues continued to get worse. The issues include but are not limited to the following:

- a. delamination and micro-foaming of the Splash Pad surfacing;
- b. failure of the jumping jets;
- c. underperformance of the pumping and filtration system;
- d. water retainage in the buffings;
- e. failure of the PIP mixture;
- f. the No Fault PIP materials, due to their porous nature, allow water to seep through them, thereby causing water to be trapped and delayed in returning back to the reservoir tank; and

- g. large quantities of water and chemicals are wasted due to the delay/loss in water returning back to the reservoir tank for the reasons described above.

22. In October 2021, the City closed the Splash Pad for the season with the understanding that BBI would coordinate necessary repairs with other involved parties. BBI installed a fence at the perimeter at that time.

23. Unfortunately, BBI did not commence repairs. BBI later advised that given its belief that the issues and defects were attributable to design responsibilities of S&ME, BBI would not commence repairs without involvement of S&ME or another designer.

24. The City repeatedly followed up with involved parties an effort to get the parties to commence and complete repairs. Unfortunately, the Defendants have still failed to fix or even commit to perform any repairs to address the outstanding deficiencies.

25. Inclusive in the design and construction deficiencies are the following:

- a. the reservoir tank fails to retain and recycle enough water to keep the Splash Pad operational due to the porous nature of the No Fault PIP materials;
- b. the No Fault top finish surface and lower No Fault sub-surface materials absorb undetermined volumes of water during the Splash Pad's operation;
- c. improper directionality of some of the feature sprays;
- d. deck slope deficiencies;
- e. sub deck slopes vary significantly and do not fully comply with the Florida Building Code;

- f. some areas of the sub deck have an excessive slope, while others have no appreciable slope, which is in violation of the Florida Building Code;
- g. large wet deck areas have no established drain system in violation of the Florida Building Code;
- h. numerous locations allow water to escape by the edges and limits of the sub deck, and no sub deck drains were provided for or installed to capture that water, thereby causing additional water to be lost;
- i. the constructed bench wall obstructs large areas of the wet deck (and sub deck) perimeter, causing water to accumulate on the wet deck in violation of the Florida Building Code; and
- j. numerous spaces around the perimeter appear to not have the required 4-foot wide wet deck which must slope away from the interactive water feature surfaces at 2% to 4%.

26. To date, the Splash Pad remains closed and inaccessible to the general public.

27. On April 12, 2022, Plaintiff sent Notices of Claim Pursuant to Chapter to the Parties. See 558 Notices, attached and incorporated hereto as **Composite Exhibit “E”**.

28. As a result of Defendants’ independent and collective negligence, breaches, actions, and omissions on the Project, Plaintiff has suffered damages, which include but are not limited to, costs incurred and to be incurred in investigating the defects and deficiencies at the Splash Pad, costs incurred and to be incurred for repairing and remediating the Splash pad (including costs related to the PIP removal); loss of use and enjoyment of the Splash Pad; lost profits; costs incurred and to be incurred for additional

City time and labor to assist, manage, and conduct investigative, repair, and remediation efforts (including time and labor related to the PIP removal); consequential damages; prejudgment interest; and attorney's fees and costs.

29. Plaintiff has retained undersigned counsel to represent it in this case and is obligated to pay reasonable attorney's fees.

30. All conditions precedent to the filing of this action have been satisfied, fulfilled, or otherwise waived.

COUNT I – BREACH OF CONTRACT AGAINST BBI

31. Paragraphs 1 through 30 are hereby incorporated as though fully set forth herein.

32. On or about February 19, 2018, Plaintiff and BBI entered into a written agreement for BBI to act as the construction manager for the Splash Pad. See **Exhibit "B"**.

33. The Contract is a valid and enforceable agreement.

34. BBI breached the Contract by:

- a. failing to construct the Splash Pad in accordance with the contract documents, approved plans and specification, the Florida Building Code, and industry standards;
- b. performing defective work, which includes but is not limited to concrete sub-deck deficiencies, which did not conform which industry standards, the Florida Building Code, and the Project plans and specifications;
- c. selecting an unsatisfactory, inappropriate, and defective PIP surface material for the Splash Pad;

- d. failing to provide sufficient or accurate recommendations as to the quality, maintainability, and durability of the PIP surface material for the Splash Pad;
- e. using an unsatisfactory, inappropriate, and defective PIP surface material for the Splash Pad;
- f. failing to ensure water was properly introduced to the Splash Pad once the PIP surface material was installed;
- g. failing to ensure proper operation of the Splash Pad prior to project completion;
- h. failing to complete its scope in a good and workmanlike manner;
- i. failing to ensure quality assurance; and
- j. failing to immediately repair deficiencies.

35. Plaintiff has demanded that BBI comply with its contractual obligations, but BBI has failed to do so.

36. As a direct and proximate result of BBI's material breach of the Contract, Plaintiff has suffered and will continue to suffer damages, which include but are not limited to, costs incurred and to be incurred in investigating the defects and deficiencies at the Splash Pad, costs incurred and to be incurred for repairing and remediating the Splash pad (including costs related to the PIP removal); loss of use and enjoyment of the Splash Pad; lost profits; costs incurred and to be incurred for additional City time and labor to assist, manage, and conduct investigative, repair, and remediation efforts (including time and labor related to the PIP removal); consequential damages; prejudgment interest; and attorney's fees and costs.

WHEREFORE, Plaintiff demands judgment against BBI for damages, repair/remediation costs, loss of use, lost profits, pre and post judgment interest, additional City time and labor, consequential damages, attorney's fees and costs, and any and all other relief the Court deems just and proper.

COUNT II – BREACH OF EXPRESS WARRANTIES AGAINST BBI

37. Paragraphs 1 through 30 are hereby incorporated as though fully set forth herein.

38. On or about May 27, 2021, BBI provided to Plaintiff a written warranty which stated it “warrants all labor and material for the [Project], in accordance with the plans and specifications, for a period of two years from the date of substantial completion for each area or building as detailed below.” See BBI Warranty, attached and incorporated hereto as **Exhibit “F”**.

39. As stated explicitly, inclusive in that warranty is the Splash Pad. See **Exhibit “F”**.

40. Pursuant to Section 3.5 of the General Provisions of the BBI Contract, BBI agreed to the following language:

- a. “The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from construction defects, except for those inherent in the quality of the Work the Contract Documents require or permit. . . .” See **Exhibit “B”**.

41. Further, Pursuant to Section 12.2.2.1 of the General Provisions of the BBI Contract, BBI agreed to the following language:

- a. "In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner. . . ." See **Exhibit "B"**.

42. Plaintiff relied upon the warranties, skill, and judgment from BBI to ensure the design and construction of the Splash Pad was free from defect or deficiency in materials or workmanship, as well as in accordance with the plans and specifications filed as a matter of public record, the applicable building codes, applicable local and national codes, ordinances and industry standards, and good design, engineering, and construction practices.

43. BBI breached the warranties by negligently constructing the Splash Pad and failing to remedy the same.

44. As a direct and proximate result of BBI's material breach, Plaintiff has suffered and will continue to suffer damages, which include but are not limited to, costs incurred and to be incurred in investigating the defects and deficiencies at the Splash Pad, costs incurred and to be incurred for repairing and remediating the Splash pad (including costs related to the PIP removal); loss of use and enjoyment of the Splash Pad;

lost profits; costs incurred and to be incurred for additional City time and labor to assist, manage, and conduct investigative, repair, and remediation efforts (including time and labor related to the PIP removal); consequential damages; prejudgment interest; and attorney's fees and costs.

WHEREFORE, Plaintiff demands judgment against BBI for damages, repair/remediation costs, loss of use, lost profits, pre and post judgment interest, additional City time and labor, consequential damages, attorney's fees and costs, and any and all other relief the Court deems just and proper.

COUNT III – NEGLIGENCE AGAINST BBI

45. Paragraphs 1 through 30 are hereby incorporated as though fully set forth herein.

46. BBI served as the construction manager for the Splash Pad.

47. BBI had a duty to perform its work on the Splash Pad in a good and workmanlike manner, free from defects, and in accordance with industry standards, the Florida Building Code, and the Project plans and specifications.

48. BBI breached its duties to Plaintiff by:

- a. failing to construct the Splash Pad in accordance with the contract documents, approved plans and specification, the Florida Building Code, and industry standards;
- b. performing defective work, which includes but is not limited to concrete sub deck deficiencies, which did not conform which industry standards, the Florida Building Code, and the Project plans and specifications;

- c. selecting an unsatisfactory, inappropriate, and defective PIP surface material for the Splash Pad;
- d. failing to provide sufficient or accurate recommendations as to the quality, maintainability, and durability of the PIP surface material for the Splash Pad;
- e. using an unsatisfactory, inappropriate, and defective PIP surface material for the Splash Pad;
- f. failing to ensure water was properly introduced to the Splash Pad once the PIP surface material was installed;
- g. failing to ensure proper operation of the Splash Pad prior to project completion;
- h. failing to complete its scope in a good and workmanlike manner;
- i. failing to ensure quality assurance; and
- j. failing to immediately repair deficiencies.

49. As a direct and proximate result of BBI's negligence, Plaintiff has suffered and will continue to suffer damages, which include but are not limited to, costs incurred and to be incurred in investigating the defects and deficiencies at the Splash Pad, costs incurred and to be incurred for repairing and remediating the Splash pad (including costs related to the PIP removal); loss of use and enjoyment of the Splash Pad; lost profits; costs incurred and to be incurred for additional City time and labor to assist, manage, and conduct investigative, repair, and remediation efforts (including time and labor related to the PIP removal); consequential damages; prejudgment interest; and attorney's fees and costs.

WHEREFORE, Plaintiff demands judgment against BBI for damages, repair/remediation costs, loss of use, lost profits, pre and post judgment interest, additional City time and labor, consequential damages, attorney's fees and costs, and any and all other relief the Court deems just and proper.

COUNT IV – BREACH OF FLORIDA BUILDING CODE AGAINST BBI

50. Paragraphs 1 through 30 are hereby incorporated as though fully set forth herein.

51. Pursuant to Section 553.84, *Florida Statutes*, Plaintiff has a cause of action against BBI for any damages resulting from a building code violation.

52. BBI acted as the construction manager for the Splash Pad and owed a statutory duty to Plaintiff, pursuant to the Florida Building Code and Section 558.84, *Florida Statutes*, to perform its scope of work in compliance with the Florida Building Code.

53. BBI's violations of the Florida Building Code include but are not limited to the following:

- a. the Florida Building Code requires the wet-decking around the interactive water feature to slope away (at minimum of 2% and a maximum of 4% for the first 4-feet) to deck drains or away from the interactive water feature. The wet deck must also be impervious, textured/slip resistant, and slope away from the interactive water feature to yard drains or settle into the soft scape. The Splash Pad has numerous spaces around the interactive water feature perimeter which

do not have the required 4-feet wide wet deck sloping away from the interactive water feature surfaces at 2% to 4%; and

- b. sub deck slopes vary significantly and do not comply completely with the Florida Building Code requirements.

54. The aggregate effect of the violations above have caused the Splash Pad to fail, damages to Plaintiff, and requires immediate repair.

55. As the construction manager, BBI knew or should have known Florida Building Code violations existed.

56. As a direct and proximate result of the violations, Plaintiff has suffered and will continue to suffer damages, which include but are not limited to, costs incurred and to be incurred in investigating the defects and deficiencies at the Splash Pad, costs incurred and to be incurred for repairing and remediating the Splash pad (including costs related to the PIP removal); loss of use and enjoyment of the Splash Pad; lost profits; costs incurred and to be incurred for additional City time and labor to assist, manage, and conduct investigative, repair, and remediation efforts (including time and labor related to the PIP removal); consequential damages; prejudgment interest; and attorney's fees and costs.

WHEREFORE, Plaintiff demands judgment against BBI for damages, repair/remediation costs, loss of use, lost profits, pre and post judgment interest, additional City time and labor, consequential damages, attorney's fees and costs, and any and all other relief the Court deems just and proper.

COUNT V – BREACH OF EXPRESS WARRANTIES AGAINST NO FAULT

57. Paragraphs 1 through 30 are hereby incorporated as though fully set forth herein.

58. On April 22, 2020, the City provided No Fault with Purchase Order No. 20201556 for the PIP surfacing for the Splash Pad. See **Exhibit “D”**.

59. Pursuant to Section 3 of the No Fault PO, No Fault agreed and warranted to Plaintiff that “all work or services shall be performed in a good and competent workmanlike manner and that any goods supplied are new, of good quality, and free from defects in title, workmanship, material, and in design, and are in full compliance with the specifications. . . .” See **Exhibit “D”**.

60. Plaintiff relied upon the warranties, skill, and judgment from No Fault to ensure the materials provided and installed at the Splash Pad was free from defect or deficiency in materials or workmanship, as well as in accordance with the plans and specifications filed as a matter of public record, the applicable building codes, applicable local and national codes, ordinances and industry standards, and good design, engineering, and construction practices.

61. No Fault breached the warranties by negligently supplying an unsatisfactory, inappropriate, and defective PIP surface material for the Splash Pad and failing to remedy the same.

62. As a direct and proximate result of No Fault’s material breach, Plaintiff has suffered and will continue to suffer damages, which include but are not limited to, costs incurred and to be incurred in investigating the defects and deficiencies at the Splash Pad, costs incurred and to be incurred for repairing and remediating the Splash pad

(including costs related to the PIP removal); loss of use and enjoyment of the Splash Pad; lost profits; costs incurred and to be incurred for additional City time and labor to assist, manage, and conduct investigative, repair, and remediation efforts (including time and labor related to the PIP removal); consequential damages; prejudgment interest; and attorney's fees and costs.

WHEREFORE, Plaintiff demands judgment against No Fault for damages, repair/remediation costs, loss of use, lost profits, pre and post judgment interest, additional City time and labor, consequential damages, attorney's fees and costs, and any and all other relief the Court deems just and proper.

COUNT VI – CONTRACTUAL INDEMNITY AGAINST NO FAULT

63. Paragraphs 1 through 30 are hereby incorporated as though fully set forth herein.

64. Pursuant to the No Fault PO, No Fault is required to indemnify and hold Plaintiff harmless from any damages which result from and/or caused by No Fault's services. **See Exhibit "D"**.

65. Section 4 of the No Fault PO states No Fault is required to indemnify, hold harmless, and defend Plaintiff from any loss, expense, claim, or damage arising from any claim or action based on any acts or omissions of No Fault, its employees, servants, agents, or subcontractors. **See Exhibit "D"**.

66. Plaintiff is entitled to indemnification from No Fault for any damages for which No Fault is liable, as well as attorney's fees, expenses, and costs incurred in bringing said claims.

WHEREFORE, Plaintiff demands judgment against No Fault for damages, repair/remediation costs, loss of use, lost profits, pre and post judgment interest, additional City time and labor, consequential damages, attorney's fees and costs, and any and all other relief the Court deems just and proper.

COUNT VII – NEGLIGENCE AGAINST NO FAULT

67. Paragraphs 1 through 30 are hereby incorporated as though fully set forth herein.

68. No Fault served as the PIP supplier and subcontractor for the Splash Pad.

69. No Fault had a duty to perform its work on the Splash Pad in a good and workmanlike manner, free from defects, and in accordance with industry standards, the Florida Building Code, and the Project plans and specifications.

70. No Fault breached its duties to Plaintiff by:

- a. performing defective work, which did not conform which industry standards, the Florida Building Code, and the Project plans and specifications;
- b. supplying an unsatisfactory, inappropriate, and defective PIP surface material for the Splash Pad;
- c. installing an unsatisfactory, inappropriate, and defective PIP surface material for the Splash Pad;
- d. failing to ensure quality assurance; and
- e. failing to immediately repair deficiencies.

71. As a direct and proximate result of No Fault's negligence, Plaintiff has suffered and will continue to suffer damages, which include but are not limited to, costs

incurred and to be incurred in investigating the defects and deficiencies at the Splash Pad, costs incurred and to be incurred for repairing and remediating the Splash pad (including costs related to the PIP removal); loss of use and enjoyment of the Splash Pad; lost profits; costs incurred and to be incurred for additional City time and labor to assist, manage, and conduct investigative, repair, and remediation efforts (including time and labor related to the PIP removal); consequential damages; prejudgment interest; and attorney's fees and costs.

WHEREFORE, Plaintiff demands judgment against No Fault for damages, repair/remediation costs, loss of use, lost profits, pre and post judgment interest, additional City time and labor, consequential damages, attorney's fees and costs, and any and all other relief the Court deems just and proper.

COUNT VIII – BREACH OF FLORIDA BUILDING CODE AGAINST NO FAULT

72. Paragraphs 1 through 30 are hereby incorporated as though fully set forth herein.

73. Pursuant to Section 553.84, *Florida Statutes*, Plaintiff has a cause of action against No Fault for any damages resulting from a building code violation.

74. No Fault was the PIP supplier and subcontractor for the Splash Pad and owed a statutory duty to Plaintiff, pursuant to the Florida Building Code and Section 558.84, *Florida Statutes*, to perform its scope of work in compliance with the Florida Building Code.

75. No Fault's violations of the Florida Building Code include but are not limited to the following:

- a. the Florida Building Code does not allow for a porous deck surface material; and
- b. the Florida Building Code requires the wet-decking around the interactive water feature to slope away (at minimum of 2% and a maximum of 4% for the first 4-feet) to deck drains or away from the interactive water feature. The wet deck must also be impervious, textured/slip resistant, and slope away from the interactive water feature to yard drains or settle into the soft scape. The Splash Pad has numerous spaces around the interactive water feature perimeter which do not have the required 4-foot wide wet deck sloping away from the interactive water feature surfaces at 2% to 4%.

76. The aggregate effect of the violations above have caused the Splash Pad to fail, damages to Plaintiff, and requires immediate repair.

77. As the PIP supplier and subcontractor, No Fault knew or should have known Florida Building Code violations existed.

78. As a direct and proximate result of the violations, Plaintiff has suffered and will continue to suffer damages, which include but are not limited to, costs incurred and to be incurred in investigating the defects and deficiencies at the Splash Pad, costs incurred and to be incurred for repairing and remediating the Splash pad (including costs related to the PIP removal); loss of use and enjoyment of the Splash Pad; lost profits; costs incurred and to be incurred for additional City time and labor to assist, manage, and conduct investigative, repair, and remediation efforts (including time and labor related to

the PIP removal); consequential damages; prejudgment interest; and attorney's fees and costs.

WHEREFORE, Plaintiff demands judgment against No Fault for damages, repair/remediation costs, loss of use, lost profits, pre and post judgment interest, additional City time and labor, consequential damages, attorney's fees and costs, and any and all other relief the Court deems just and proper.

COUNT IX – BREACH OF CONTRACT AGAINST S&ME

79. Paragraphs 1 through 30 are hereby incorporated as though fully set forth herein.

80. On or about April 26, 2017, Plaintiff and S&ME entered into a written agreement for S&ME to act as landscape architecture and park services for the Splash Pad. See **Exhibit "A"**.

81. The Contract is a valid and enforceable agreement.

82. S&ME breached the Contract by:

- a. failing to design the Splash Pad in accordance with the contract documents, the Florida Building Code, and industry standards;
- b. failing to review and approve submittals with due care and in accordance with industry standards;
- c. failing to provide sufficient construction phase services for the Splash Pad, as fully detailed in its proposal for the Splash Pad and its contract, which includes but is not limited to site visits, site observations, site inspections, requests for information, and close out inspections;
- d. failing to complete its scope in a good and workmanlike manner;

- e. failing to ensure quality assurance; and
- f. failing to immediately repair deficiencies.

83. Plaintiff has demanded that S&ME comply with its contractual obligations, but S&ME has failed to do so.

84. As a direct and proximate result of S&ME's material breach of the Contract, Plaintiff has suffered and will continue to suffer damages, which include but are not limited to, costs incurred and to be incurred in investigating the defects and deficiencies at the Splash Pad, costs incurred and to be incurred for repairing and remediating the Splash pad (including costs related to the PIP removal); loss of use and enjoyment of the Splash Pad; lost profits; costs incurred and to be incurred for additional City time and labor to assist, manage, and conduct investigative, repair, and remediation efforts (including time and labor related to the PIP removal); consequential damages; prejudgment interest; and attorney's fees and costs.

WHEREFORE, Plaintiff demands judgment against S&ME for damages, repair/remediation costs, loss of use, lost profits, pre and post judgment interest, additional City time and labor, consequential damages, attorney's fees and costs, and any and all other relief the Court deems just and proper.

COUNT X – BREACH OF EXPRESS WARRANTY AGAINST S&ME

85. Paragraphs 1 through 30 are hereby incorporated as though fully set forth herein.

86. On or about April 26, 2017, Plaintiff and S&ME entered into a written agreement for S&ME to act as landscape architecture and park services for the Splash Pad. See **Exhibit "A"**.

87. Pursuant to the S&ME Contract, S&ME warranted to Plaintiff “it is competent and otherwise able to provide professional and high quality services to [Plaintiff].” See **Exhibit “A”**.

88. Further, Pursuant to Section 13(a) of the S&ME Contract, S&ME agreed it “shall be responsible for the quality, accepted standards, technical accuracy and the coordination of all services furnished by [S&ME] under [the Contract]. . . .” See **Exhibit “A”**.

89. Plaintiff relied upon the warranties, skill, and judgment from S&ME to ensure the materials provided and installed at the Splash Pad was free from defect or deficiency in materials or workmanship, as well as in accordance with the plans and specifications filed as a matter of public record, the applicable building codes, applicable local and national codes, ordinances and industry standards, and good design, engineering, and construction practices.

90. S&ME breached the warranties by negligently supplying an unsatisfactory and defective PIP design for the Splash Pad and failing to remedy the same.

91. As a direct and proximate result of S&ME’s material breach, Plaintiff has suffered and will continue to suffer damages, which include but are not limited to, costs incurred and to be incurred in investigating the defects and deficiencies at the Splash Pad, costs incurred and to be incurred for repairing and remediating the Splash pad (including costs related to the PIP removal); loss of use and enjoyment of the Splash Pad; lost profits; costs incurred and to be incurred for additional City time and labor to assist, manage, and conduct investigative, repair, and remediation efforts (including time and

labor related to the PIP removal); consequential damages; prejudgment interest; and attorney's fees and costs.

WHEREFORE, Plaintiff demands judgment against No Fault for damages, repair/remediation costs, loss of use, lost profits, pre and post judgment interest, additional City time and labor, consequential damages, attorney's fees and costs, and any and all other relief the Court deems just and proper.

COUNT XI – CONTRACTUAL INDEMNITY AGAINST S&ME

92. Paragraphs 1 through 30 are hereby incorporated as though fully set forth herein.

93. Pursuant to the S&ME Contract, S&ME is required to indemnify and hold Plaintiff harmless from any damages which result from and/or caused by S&ME's services.

94. Section 33 of the S&ME Contract states S&ME shall indemnify and hold harmless Plaintiff from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees, to the extent caused by S&ME's negligence, recklessness, or intentionally wrongful conduct.

95. Plaintiff is entitled to indemnification from S&ME for any damages for which S&ME is liable, as well as attorney's fees, expenses, and costs incurred in bringing said claims.

WHEREFORE, Plaintiff demands judgment against S&ME for damages, repair/remediation costs, loss of use, lost profits, pre and post judgment interest, additional City time and labor, consequential damages, attorney's fees and costs, and any and all other relief the Court deems just and proper.

COUNT XII – PROFESSIONAL NEGLIGENCE AGAINST S&ME

96. Paragraphs 1 through 30 are hereby incorporated as though fully set forth herein.

97. At all material times, S&ME assumed the obligation of providing landscape architecture and park services for the Project. S&ME's professional services included design and construction phase services for the Splash Pad.

98. S&ME, inclusive in its scope of work, reviewed shop drawings, coordinated RFI responses, observed construction progress, performed walkthroughs, reviewed CM pay applications, and reviewed and approved of as-built drawings.

99. At all materials times, S&ME held itself out as qualified and capable of providing the professional services it provided for the Splash Pad.

100. S&ME was obligated and had a duty to render its services in a professional manner and in according with the standard of care and practice prevailing among similar professionals in the industry.

101. Defects and definitions exist in the Splash Pad's design, including but not limited to, the surfacing material specified, approved, and ultimately used.

102. S&ME's initial specifications for the Splash Pad were inappropriate for its use.

103. Further, S&ME approved the alternative surfacing material used for the Splash Pad.

104. S&ME breached its professional duties, acted negligently by failing to exercise reasonable care in the performance of its work and professional services (which included the design and construction phase services described above), and failed to

render professional services in accordance with the standard of care and practice prevailing among similar professionals in the industry.

105. S&ME knew, or should have known, that if it negligently performed its work and duties, it would cause harm and damages to Plaintiff.

106. As a direct and proximate result of S&ME's negligence, Plaintiff has suffered and will continue to suffer damages, which include but are not limited to, costs incurred and to be incurred in investigating the defects and deficiencies at the Splash Pad, costs incurred and to be incurred for repairing and remediating the Splash pad (including costs related to the PIP removal); loss of use and enjoyment of the Splash Pad; lost profits; costs incurred and to be incurred for additional City time and labor to assist, manage, and conduct investigative, repair, and remediation efforts (including time and labor related to the PIP removal); consequential damages; prejudgment interest; and attorney's fees and costs.

WHEREFORE, Plaintiff demands judgment against S&ME for damages, repair/remediation costs, loss of use, lost profits, pre and post judgment interest, additional City time and labor, consequential damages, attorney's fees and costs, and any and all other relief the Court deems just and proper.

COUNT XIII – BREACH OF FLORIDA BUILDING CODE AGAINST S&ME

107. Paragraphs 1 through 30 are hereby incorporated as though fully set forth herein.

108. Pursuant to Section 553.84, *Florida Statutes*, Plaintiff has a cause of action against S&ME for any damages resulting from a building code violation.

109. S&ME acted as the landscape architecture and park designer for the Splash Pad and owed a statutory duty to Plaintiff, pursuant to the Florida Building Code and Section 558.84, *Florida Statutes*, to perform its scope of work in compliance with the Florida Building Code.

110. S&ME's violations of the Florida Building Code include but are not limited to the following:

- a. the Florida Building Code requires the wet-decking around the interactive water feature to slope away (at minimum of 2% and a maximum of 4% for the first 4-feet) to deck drains or away from the interactive water feature. The wet deck must also be impervious, textured/slip resistant, and slope away from the interactive water feature to yard drains or settle into the soft scape. The Splash Pad has numerous spaces around the interactive water feature perimeter which do not have the required 4-feet wide wet deck sloping away from the interactive water feature surfaces at 2% to 4%; and
- b. sub deck slopes vary significantly and do not comply completely with the Florida Building Code requirements.

111. The aggregate effect of the violations above have caused the Splash Pad to fail, damages to Plaintiff, and requires immediate repair.

112. As the landscape architecture and park designer, S&ME knew or should have known Florida Building Code violations existed.

113. As a direct and proximate result of the violations, Plaintiff has suffered and will continue to suffer damages, which include but are not limited to, costs incurred and

to be incurred in investigating the defects and deficiencies at the Splash Pad, costs incurred and to be incurred for repairing and remediating the Splash pad (including costs related to the PIP removal); loss of use and enjoyment of the Splash Pad; lost profits; costs incurred and to be incurred for additional City time and labor to assist, manage, and conduct investigative, repair, and remediation efforts (including time and labor related to the PIP removal); consequential damages; prejudgment interest; and attorney's fees and costs.

WHEREFORE, Plaintiff demands judgment against S&ME for damages, repair/remediation costs, loss of use, lost profits, pre and post judgment interest, additional City time and labor, consequential damages, attorney's fees and costs, and any and all other relief the Court deems just and proper.

COUNT XIV – BREACH OF BOND AGAINST WESTFIELD

114. Paragraphs 1 through 30 are hereby incorporated as though fully set forth herein.

115. Westfield issued a Payment and Performance Bond to BBI with regard to the Project. See **Exhibit “C”**.

116. The Bond is an enforceable contract.

117. Westfield, through the Bond, bound itself, jointly and severally with BBI, to Plaintiff for the performance of the BBI Contract.

118. Plaintiff has fully performed all of its obligations due and owing under the Bond and the BBI Contract.

119. BBI breached its Contract, as outlined in IV of this Complaint, which is incorporated herein by reference.

120. On April 12, 2022, Plaintiff, through undersigned counsel, sent Westfield its Notice of Claim Pursuant to Chapter 558, Florida Statutes.

121. Within that Notice, Plaintiff advised Westfield that it was considering declaring a Contractor Default due to issues with the Splash Pad and requested a conference to discuss said issues pursuant to Section 3.1 of the Performance Bond.

122. On June 16, 2022, Plaintiff, BBI, and Westfield attended a conference to discuss the issues at the Splash Pad and resolution of the same.

123. As of the filing date of this Complaint, the issues at the Splash Pad persist and remain unresolved.

124. Accordingly, on October 21, 2022, Plaintiff gave Notice to Westfield of Contractor Default and Termination of Contract, pursuant to Section 14.2.1 of the BBI Contract and Section 3.1 of the Performance Bond.

125. Pursuant to Section 5 of the Performance Bond, Westfield was required to “promptly” and “at [Westfield’s] expense” take one of the following actions:

- a. arrange for BBI, with the consent of Plaintiff, perform and complete the Contract;
- b. undertake to perform and complete the BBI Contract itself, through its agents or independent contractors;
- c. obtain bids or negotiated proposals from qualified contractors acceptable to Plaintiff for a contract for performance and completion of the BBI Contract, arrange for a contract to be prepared for execution by Plaintiff and a contractor selected with the Owner’s concurrent, to be secured with performance and payment bonds executed by a qualified

surety equivalent to the bonds issued on the BBI Contract, and pay to Plaintiff the amount of damages as described in Section 7 of the Bond in excess of the Balance of the Contract Price incurred by Plaintiff as a result of the Contractor Default; or

d. waiver its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- i. after investigation, determine the amount for which it may be liable to Plaintiff and, as soon as practicable after the amount is determined, make payment to Plaintiff; or
- ii. Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

126. Despite ample time to investigate and resolve the issues at the Splash Pad, Westfield did not perform in compliance with the Bond.

127. As a direct and proximate result of Westfield's failure to perform pursuant to the terms of the bond, Plaintiff has suffered and will continue to suffer damages, which include but are not limited to, costs incurred and to be incurred in investigating the defects and deficiencies at the Splash Pad, costs incurred and to be incurred for repairing and remediating the Splash pad (including costs related to the PIP removal); loss of use and enjoyment of the Splash Pad; lost profits; costs incurred and to be incurred for additional City time and labor to assist, manage, and conduct investigative, repair, and remediation efforts (including time and labor related to the PIP removal); consequential damages; prejudgment interest; and attorney's fees and costs.

WHEREFORE, Plaintiff demands judgment against Westfield for damages, repair/remediation costs, loss of use, lost profits, pre and post judgment interest, additional City time and labor, consequential damages, attorney's fees and costs, and any and all other relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial with respect to all matters so triable by right.

DATED this 29th day of November, 2022.

/s/ Trevor B. Arnold

TREVOR B. ARNOLD

Florida Bar No.: 0545902

NIKKI K. BHAVSAR

Florida Bar No.: 1018481

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Attorneys for Plaintiff, City of Palm Coast

EXHIBIT “A”



Administrative Services & Economic Development
Central Services Division

160 Lake Avenue
Palm Coast, FL 32164
386-986-3730

March 31, 2017

Mr. Leonard E. Arnold, Jr.
Principal
S&ME, Inc.
3201 Spring Forest Road
Raleigh, North Carolina 27616

Re: Landscape Architectural and Park Design Services (RFQ-CD-CM-14-05)

Dear Mr. Arnold, Jr.:

Section 11 of the above Contract allows for two additional one-year terms following the initial term which ends on June 26, 2017.

This is the first one-year renewal option that the City wishes to exercise. If you are in agreement, please have this renewal letter signed and witnessed where indicated below that you agree to renew for one year at the same original terms and conditions until June 26, 2018. Please return the document to the address indicated above to our Staff Assistant, Peg Wishneski. Once the letter is fully executed, we will send you a copy for your records.

All invoices should be sent to the Accounts Payable Department, City of Palm Coast, 160 Lake Avenue, Palm Coast, Florida 32164, or email them to ap@palmcoastgov.com.

Legal notices should be sent to the attention of the City Manager at the same address listed above.

If you should have any questions, please don't hesitate to contact me at 386-986-3796 or Peg at 386-986-2367.

Sincerely,

Beau Falgout, Director
Administrative Services and Economic
Development

Paw:pw



please recycle

palmcoastgov.com

CITY OF PALM COAST

S&ME, INC.


Signature, City Manager


Signature

YMLANDON, CITYMANAGER
Print Name

LEONARD E. ARNOLD, JR.
Print Name

4/27/17
Date


4/16/2017
Date


WITNESS/ATTEST:

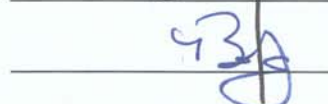
WITNESS/ATTEST:


Virginia Smith, City Clerk



 4/26/17 Department Head

 4/26/17 Finance Director

 3/31/17 Central Services Division





March 20, 2017

Virginia Smith, City Clerk
City of Palm Coast
160 Cypress Point Parkway, Suite B-106
Palm Coast, FL 32765

RE: Assignment of Contract
Contract Date: 6/27/2014
Project: Continuing Contract for Planning Architectural Services
Location: Palm Coast, Florida

Dear Virginia:

On January 1, 2017 Littlejohn Engineering Associates, Inc. (Littlejohn) transitioned its planning, landscape architecture, and engineering consulting services business to S&ME, Inc. The same professionals you worked with at Littlejohn will be providing services as employees of S&ME, Inc. As part of the transitioning, Littlejohn assigned the above referenced contract to S&ME, Inc. in order for you to continue receiving services from the same professionals.

Please indicate your consent and approval to the assignment of the above referenced contract from Littlejohn to S&ME, Inc. as of January 1, 2017 by signing below.

Littlejohn Engineering Associates, Inc.

By: _____

S&ME, Inc.

By: _____

Client Name

By: _____

CITY OF PALM COAST
CONTRACT WITH LITTLEJOHN ENGINEERING ASSOCIATES, INC.
FOR LANDSCAPE ARCHITECTURAL AND PARK DESIGN SERVICES
(RFQ-CD-CM-14-05)

THIS CONTRACT made and entered into the 27th day of June, 2014 by and between the:

**City of Palm Coast, Florida
160 Cypress Point Parkway, Suite B-106
Palm Coast, Florida 32164**

a municipal corporation of the State of Florida, holding tax exempt status, hereinafter referred to as the "CITY," and:

**Littlejohn Engineering Associates, Inc.
1615 Edgewater Drive, Suite 180
Orlando, Florida 32804**

a corporation, authorized to do business in the State of Florida, hereinafter referred to as the "Contractor".

The CITY and the Contractor are collectively referred to herein as the "parties".

WITNESSETH:

WHEREAS, the CITY desires to retain the Contractor for the work identified in the Request for Qualifications and description of services outlined in Exhibit A; and

WHEREAS, the CITY desires to employ the Contractor for the performance to support the activities, programs, and projects of the CITY upon the terms and conditions hereinafter set forth, and the Contractor is desirous of performing and providing such services upon said terms and conditions; and

WHEREAS, the Contractor hereby warrants and represents to the CITY that it is competent and otherwise able to provide professional and high quality services to the CITY; and

WHEREAS, all submissions submitted by the Contractor in the Request for Qualifications submitted to the CITY are hereby incorporated to the extent not inconsistent with the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and between the parties hereto as follows:

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SECTION 1: DEFINITIONS.

Ad valorem - In proportion to the estimated value of the goods taxed.

Contract – This document and all subsequent Work Orders between the CITY and CONTRACTOR. Each Exhibit, as identified below, even if not physically attached, shall be treated as if they were part of this Contract.

Billing Period – The period of time between project commencement to the close of the current period, (inclusive); or from the close of the previous billing period, (exclusive), to the close of the current period, usually concurrent with the month. In no case shall this period be less than one calendar month except for the final Billing Period.

Bona Fide - Made or carried out in good faith; sincere.

City – The City of Palm Coast, a municipal corporation of the State of Florida holding tax exempt status.

Contractor - To include all principals of the CONTRACTOR including, but not limited to, full and part time employees, professional or otherwise, and all other agents employed by or for CONTRACTOR to perform its obligations hereunder.

Description of Services - Shall be written in paragraph form reasonably describing those services the CITY can expect the CONTRACTOR to provide. The description shall be written in such a manner that the type of service is clearly provided, but broad enough that all services reasonably expected of the CONTRACTOR, including services provided by partners, subcontractors, and other supporting professionals, can be provided to the CITY.

Designated Representative – A person who administers, reviews, and coordinates the provision of services. This definition applies equally to the CITY and to the CONTRACTOR.

Force Majeure - Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, any law, proclamation, regulation, or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Contract is beyond the control and without the fault or negligence of the party seeking relief under this Contract.

Law - Said phrase shall include statutes, codes, rules, and regulations of whatsoever type or nature enacted or adopted by a governmental entity of competent jurisdiction.

Pari Materia – of the same matter; on the same subject. Laws pari materia must be construed with reference to each other/together when related to the same matter or subject. The provisions of a Contract are to be construed together with no isolated construction of a particular provision such that it would defeat the overall intent of the Contract.

- (b) The CONTRACTOR shall not have the right to compel the exercise of the ad valorem taxing power of the CITY.

SECTION 5: CONTRACTOR UNDERSTANDING OF SERVICES REQUIRED.

(a) Execution of this Contract by the CONTRACTOR is a representation that the CONTRACTOR is familiar with local conditions and with the services to be performed. The CONTRACTOR shall make no claim for additional time or money based upon its failure to comply with this Contract. The CONTRACTOR has informed the CITY, and hereby represents to the CITY, that it has extensive experience in performing and providing the services and/or goods described in this Contract and to be identified in the Work Orders, and that it is well acquainted with the components that are properly and customarily included within such projects and the requirements of laws, ordinances, rules, regulations, or orders of any public authority or licensing entity having jurisdiction over CITY Projects. Execution of a Work Order shall be an affirmative and irrefutable representation by the CONTRACTOR to the CITY that the CONTRACTOR is fully familiar with any and all requisite work conditions of the provisions of the services.

(b) The recitals herein are true and correct and form and constitute a material part of this Contract upon which the parties have relied.

(c) It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties, or as constituting the CONTRACTOR (including, but not limited to, its officers, employees, and agents) the agent, representative, or employee of the CITY for any purpose, or in any manner, whatsoever. The CONTRACTOR is to be and shall remain forever an independent CONTRACTOR with respect to all services performed under this Contract.

(d) Persons employed by the CONTRACTOR in the provision and performance of the services and functions pursuant to this Contract shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the CITY'S officers and employees either by operation of law or by the CITY.

SECTION 6: GENERAL PROVISIONS.

(a) Each party hereto represents to the other that it has undertaken all necessary actions to execute this Contract, and that it has the legal authority to enter into this Contract, and to undertake all obligations imposed on it. The person(s) executing this Contract for the CONTRACTOR certifies/certify that he/she/they is/are authorized to bind the CONTRACTOR fully to the terms of this Contract.

(b) This Contract is for Landscape Architectural and Park Design Services needed for the CITY'S operations as set forth herein and as otherwise directed by the CITY to include all labor and materials that may be required.

(c) The CONTRACTOR acknowledges that the CITY may retain other Contractors to provide the same types of services for CITY projects. The CITY reserves the right to select which Contractor shall provide services for CITY projects.

(d) The CONTRACTOR acknowledges that the CITY has retained other Contractors and the coordination between said Contractors and the CONTRACTOR may be necessary from time to time for the successful completion of each Work Order. The CONTRACTOR agrees to provide such coordination as necessary within the Scope of Services as contained in Section 12; Description of Services.

(e) The CONTRACTOR agrees to provide and ensure coordination between goods / services providers.

(f) Time is of the essence of the lawful performance of the duties and obligations contained in this Contract to include, but not be limited to, each Work Order. The parties covenant and agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Contract and each Work Order.

(g) CONTRACTOR shall maintain an adequate and competent staff or professionally qualified persons throughout the performance of this Contract to ensure acceptable and timely completion of each Work Order.

(h) Requirements for signing and sealing plans, reports, and documents prepared by the CONTRACTOR shall be governed by the laws and regulations of Flagler County and State Regulatory agencies.

(i) The CONTRACTOR hereby guarantees the CITY that all material, supplies, services, and equipment as listed on a Purchase Order meet the requirements, specifications, and standards as provided for under the Federal Occupations Safety and Health Act of 1970, from time to time amended and in force on the date hereof.

(j) No claim for services furnished by the CONTRACTOR not specifically provided for herein shall be honored by the CITY.

SECTION 7: CODES AND DESIGN STANDARDS.

(a) All the services to be provided or performed by the CONTRACTOR shall in the minimum be in conformance with commonly accepted industry and professional codes and standards, standards of the CITY, and the laws of any Federal, State, or local regulatory agencies.

(b) The CONTRACTOR shall be responsible for keeping apprised of any changing laws applicable to the services to be performed under this Contract.

SECTION 8: SUBCONTRACTORS.

(a) Any CONTRACTOR proposed subcontractor shall be submitted to the CITY for written approval prior to the CONTRACTOR entering into a subcontract. Subcontractor information shall include, but not be limited to, State registrations, business address, occupational license tax proof of payment, and insurance certifications.

(b) The CONTRACTOR shall coordinate the provision of services and work product of any CITY approved subcontractor and remain fully responsible for such services and work under the terms of this Contract.

(c) Any subcontract shall be in writing and shall incorporate this Contract and require the subcontractors to assume performance of the CONTRACTOR duties commensurately with the CONTRACTOR'S duties to the CITY under this Contract, it being understood that nothing herein shall in any way relieve the CONTRACTOR from any of its duties under this Contract. The CONTRACTOR shall provide the CITY with executed copies of all subcontracts.

SECTION 9: ASSIGNABILITY.

The CONTRACTOR shall not sublet, assign, or transfer any interest in this Contract, or claims for the money due or to become due out of this Contract to a bank, trust company, or other financial institution without written CITY approval. When approved by the CITY, written notice of such assignment or transfer shall be furnished promptly to the CITY.

SECTION 10: COMMENCEMENT / IMPLEMENTATION SCHEDULE OF CONTRACT.

(a) The CONTRACTOR shall commence the provision of services as described in this Contract immediately upon execution of this Contract.

(b) The CONTRACTOR and the CITY agree to make every effort to adhere to the schedules established for the various Work Orders as described in each Work Order. However, if the CONTRACTOR is delayed at any time in the provision of services by any act or omission of the CITY, or of any employee of the CITY, or by any other CONTRACTOR employed by the CITY, or by changes ordered by the CITY, or by strikes, lock outs, fire, unusual delay in transportation, unavoidable casualties, or any other causes of Force Majeure not resulting from the inactions or actions of the CONTRACTOR and beyond the CONTRACTOR'S control which would not reasonably be expected to occur in connection with or during performance or provision of the services, or by delay authorized by the CITY pending a decision, or by any cause which the CITY shall decide to justify the delay, the time of completion shall be extended for such reasonable time as the CITY may decide in its sole and absolute discretion. It is further expressly understood and agreed that the CONTRACTOR shall not be entitled to any damages or compensation, or be reimbursed for any losses on account of any delay or delays resulting from any of the aforesaid causes or any other cause whatsoever.

SECTION 11: LENGTH OF CONTRACT.

(a) The term of this Contract is for a three (3) year period commencing on the date of full execution of this Contract by the parties.

(b) The CONTRACTOR services shall begin upon written notification to proceed by the CITY.

(c) CONTRACTOR services shall be on a work order basis and may include matters such as serving as an expert witness.

(d) Subsequent to the conclusion of the initial three (3) year term, this Contract may be renewed annually, at the City's discretion, for a maximum of two (2) additional years. Should the CITY wish to not have this Contract renewed for any year, the CITY shall provide written notice to the CONTRACTOR ninety (90) days prior to the ending date.

SECTION 12: DESCRIPTION OF SERVICES.

(a) The CONTRACTOR agrees to provide Landscape Architectural and Park Design Services. The Description of Services is further and more specifically outlined in Exhibit A.

(b) The CONTRACTOR shall diligently and in a professional and timely manner perform and provide the services outlined herein or as included in each subsequently entered Work Order. Unless modified in writing by the parties hereto, the duties of the CONTRACTOR shall not be construed to exceed the provision of the services pertaining to this Contract.

(c) The CITY and CONTRACTOR agree that there may be certain additional services required to be performed by the CONTRACTOR during the performance of the Work Orders that can not be defined sufficiently at the time of execution of this Contract. Such services shall be authorized in writing as a Change Order in accordance with Section 21. The Work Orders may contain additional instructions or provide specifications upon certain aspects of this Contract pertinent to the work to be undertaken. Such supplemental instructions or provisions shall not be construed as a modification of this Contract.

SECTION 13: CONTRACTOR RESPONSIBILITIES.

(a) The CONTRACTOR shall be responsible for the professional quality, accepted standards, technical accuracy and the coordination of all services furnished by the CONTRACTOR under this Contract as well as the conduct of its staff, personnel, employees, and agents. The CONTRACTOR shall work closely with the CITY on all aspects of the provision of the services. With respect to services, the CONTRACTOR shall be responsible for the professional quality, technical accuracy, competence, methodology, accuracy, and the coordination of all of the following which are listed for illustration purposes and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by the CONTRACTOR under this Contract. The CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in his plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature.

(b) The CONTRACTOR shall furnish a Contractor Designated Representative to administer, review, and coordinate the provision of services under this Contract and each Work Order.

(c) Neither CITY review, approval, or acceptance of, nor payment for, any of the services required under this Contract shall be construed to operate as a waiver of any rights or of any cause of action arising out of the performance of this Contract. The CONTRACTOR shall be and shall remain liable to the CITY in accordance with applicable law for all damages to the CITY caused by the CONTRACTOR'S negligent or improper performance or failure to perform any of the services furnished under this Contract.

(d) The rights and remedies of the CONTRACTOR, provided for under this Contract, are in addition to any other rights and remedies provided by law.

(e) In the event the CONTRACTOR fails to comply with the terms and conditions of this Contract, the CITY shall notify the Contractor's Designated Representative in writing so that the CONTRACTOR may take remedial action.

(f) Time is of the essence in the performance of all services provided by the CONTRACTOR under the terms of this Contract and each and every Work Order.

(g) CONTRACTOR shall not hire/employ any independent contractors during the term of this Contract without the express written approval of the City.

SECTION 14: CITY RIGHTS AND RESPONSIBILITIES.

(a) The CITY shall reasonably cooperate with the CONTRACTOR in a timely fashion at no cost to the CONTRACTOR as set forth in this Section.

(b) The CITY shall furnish a City Designated Representative to administer, review, and coordinate the provision of services under each Work Order.

(c) The CITY shall make CITY personnel available where, in the CITY'S opinion, they are required and necessary to assist the CONTRACTOR. The availability and necessity of said personnel to assist the CONTRACTOR shall be determined solely at the discretion of the CITY.

(d) The CITY shall furnish the CONTRACTOR with existing data, records, maps, plans, specifications, reports, fiscal data, and other engineering information that is available in the CITY'S files that is necessary or useful to the CONTRACTOR for the performance of the Work. All such documents conveyed by the CITY shall be, and remain the property of, the CITY and shall be returned to the CITY upon completion of the Work to be performed by the CONTRACTOR.

(e) The CITY shall examine all CONTRACTOR reports, sketches, drawing, estimates, Qualifications, and other documents presented to the CITY and indicate the CITY'S approval or disapproval within a reasonable time so as not to materially delay the provisions of the services of the CONTRACTOR.

(f) The CITY shall provide access to and make provisions for the CONTRACTOR to enter upon public and private lands as required for the CONTRACTOR within a reasonable time to perform work as necessary to complete the Work Order.

(g) The CITY shall transmit instructions, relevant information, and provide interpretation and definition of CITY policies and decisions with respect to any and all materials and other matters pertinent to the services covered by this Contract.

(h) The CITY shall give written notice to the CONTRACTOR whenever the City Designated Representative knows of a development that affects the services provided and performed under this Contract, timing of the CONTRACTOR'S provision of services, or a defect or change necessary in the services of the CONTRACTOR.

(i) The rights and remedies of the CITY provided for under this Contract are in addition to any other rights and remedies provided by law; the CITY may assert its right of recovery by any appropriate means including, but not limited to, set-off, suit, withholding, recoupment, or counterclaim, either during or after performance of this Contract.

(j) The CITY shall be entitled to recover any and all legal costs including, but not limited to, attorney fees and other legal costs that it may incur in any legal actions it may pursue in the enforcement of the terms and conditions of this Contract or the responsibilities of the CONTRACTOR in carrying out the duties and responsibilities deriving from this Contract.

(k) The failure of the CITY to insist in any instance upon the strict performance of any provision of this Contract, or to exercise any right or privilege granted to the CITY hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

(l) Neither the CITY'S review, approval or acceptance of, nor payment for, any of the services required shall be construed to operate as a waiver of any rights under this Contract nor or any cause of action arising out of the performance of this Contract and the CONTRACTOR shall be and always remain liable to the CITY in accordance with applicable law for any and all damages to the CITY caused by the CONTRACTOR'S negligent or wrongful provision or performance of any of the services furnished under this Contract.

(m) All deliverable analysis, reference data, survey data, plans and reports, or any other form of written instrument or document that may result from the Consultant's services or have been created during the course of the CONTRACTOR'S performance under this Contract shall become the property of the CITY after final payment is made to the CONTRACTOR.

(n) In the event the CITY fails to comply with the terms and conditions of this Contract, the CONTRACTOR shall notify the City's Designated Representative in writing so that the CITY may take remedial action.

SECTION 15: WAIVER.

The failure of the CITY to insist in any instance upon the strict performance of any provision of this Contract, or to exercise any right or privilege granted to the CITY hereunder, shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

SECTION 16: FORCE MAJEURE.

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure.

SECTION 17: STANDARDS OF CONDUCT.

(a) The Contractor warrants that it has not employed or retained any company or person, other than a Bona Fide employee working solely for the Contractor, to solicit or secure this Contract and that the Contractor has not paid or agreed to pay any person, company, corporation, individual, or firm other than a Bona Fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of making this Contract.

(b) If the CITY determines that any employee or representative of the CONTRACTOR is not satisfactorily performing his or her assigned duties or is demonstrating improper conduct pursuant to any assignment or work performed under this Contract, the CITY shall so notify the CONTRACTOR, in writing. The CONTRACTOR shall immediately remove such employee or representative of the CONTRACTOR from such assignment.

(c) The CONTRACTOR hereby certifies (in writing) that no undisclosed conflict of interest exists with respect to the Contract, including, but not limited to, any conflicts that may be due to representation of other clients, customers or vendees, other contractual relationships of the CONTRACTOR, or any interest in property that the CONTRACTOR may have. The CONTRACTOR further certifies that any conflict of interest that arises during the term of this Contract shall be immediately disclosed in writing to the CITY. Violation of this Section shall be considered as justification for immediate termination of this Contract.

(d) The CONTRACTOR shall not engage in any action that would create a conflict of interest for any CITY employee or other person during the course of performance of, or otherwise related to, this Contract or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

(e) The CITY shall not intentionally award publicly-funded contracts to any CONTRACTOR who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) Section 274A(e) of the Immigration and Nationality Act (INA)]. The CITY shall consider the employment by the CONTRACTOR of unauthorized aliens, a violation of Section 274A (e) of the INA. Such violation by the CONTRACTOR of the employment provisions contained in Section 274A (e) of the INA shall be grounds for immediate termination of this Contract by the CITY.

(f) The CONTRACTOR shall comply with the requirements of the Americans with Disabilities Act (ADA), and any and all related Federal or State laws which prohibits discrimination by public and private entities on the basis of disability.

(g) The CONTRACTOR shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Contract or violate any laws pertaining to civil rights, equal protection, or discrimination.

(h) If the CONTRACTOR or an affiliate is placed on a discriminatory vendor list, such action may result in termination by the City. The CONTRACTOR shall certify, upon request by the CITY that it is qualified to submit a bid under Section 287.134, Discrimination, (2) (c), Florida Statutes.

(i) If the CONTRACTOR or an affiliate is placed on the convicted vendor list following a conviction for a public entity crime, such action may result in termination by the CITY. The CONTRACTOR shall certify, upon request by the CITY, that is qualified to submit a bid under Section 287.133, Public Entity Crime, (2)(a), Florida Statutes.

(j) The CONTRACTOR shall certify, upon request by the CITY, that the CONTRACTOR maintains a drug free workplace policy in accordance with Section 287.0878, Florida Statutes. Failure to submit this certification may result in termination.

(k) The CONTRACTOR agrees to comply with Federal, State, and local environmental, health, and safety laws and regulations applicable to the services provided to the City. The CONTRACTOR agrees that any program or initiative involving the work that could adversely affect any personnel involved, citizens, residents, users, neighbors or the surrounding environment shall ensure compliance with any and all employment safety, environmental and health laws.

(l) If applicable, in accordance with Section 216.347, Florida Statutes, the CONTRACTOR shall not use funds provided by this Contract for the purpose of lobbying the Legislature, the Judicial Branch, or State Agency.

(m) The CONTRACTOR shall not publish any documents or release information regarding this Contract to the media without prior approval of the CITY.

(n) The CONTRACTOR shall ensure that all services are provided to the CITY after the CONTRACTOR has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, approvals or similar consents.

(o) The CONTRACTOR shall ensure that all taxes due from the CONTRACTOR are paid in a timely and complete manner including, but not limited to, occupational license tax.

SECTION 18: NOTICES.

(a) Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section.

(b) For the present, the parties designate the following as the representative places for giving of notice, to-wit:

(1) For the City:

City Manager
City of Palm Coast
160 Cypress Point Parkway, Suite B-106
Palm Coast, Florida 32164

(2) For the Contractor:

Leonard E. Arnold, Jr.
Principal
1615 Edgewater Drive, Suite 180
Orlando, Florida 32804
407-975-1273
Larnold@leainc.com

(c) Written notice requirements of this Contract shall be strictly construed and such requirements are a condition precedent to pursuing any rights or remedies hereunder. The CONTRACTOR agrees not to claim any waiver by CITY of such notice requirements based upon CITY having actual knowledge, implied, verbal or constructive notice, lack of prejudice, or any other grounds as a substitute for the failure of the CONTRACTOR to comply with the express written notice requirements herein. Computer notification (e-mails and message boards) shall not constitute proper written notice under the terms of the Contract.

SECTION 19: DESIGNATED REPRESENTATIVES.

(a) The City Manager, or his designated representative, represents the CITY in all matters pertaining to and arising from the work and the performance of this Contract.

(b) The City Manager or his designated representative shall have the following responsibilities:

(1) Examination of all work and rendering, in writing, decisions indicating the CITY'S approval or disapproval within a reasonable time so as not to materially delay the work of the CONTRACTOR;

(2) Transmission of instructions, receipt of information, and interpretation and definition of CITY'S policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Contract;

(3) Giving prompt written notice to the CONTRACTOR whenever the CITY knows of a defect or change necessary in the project; and

(c) Until further written notice, the City's Designated Representative for this Contract is:

City Manager
City of Palm Coast
160 Cypress Point Parkway, Suite B-106
Palm Coast, Florida 32164
Telephone Number: (386) 986-3700

(d) Prior to start of any work under this Contract, the CONTRACTOR shall submit to the CITY detailed resumes of key professional personnel that will be involved in performing services described in the work. The CITY hereby acknowledges its acceptance of such personnel to perform services under this Contract. At any time hereafter that the CONTRACTOR desires to change key professional personnel in an active assignment, it shall submit the Qualifications of the new professional personnel to

the CITY for prior approval. Key professional personnel shall include the principal-in-charge, project managers, and others interfacing with CITY personnel.

- (e) Until further written notice, the Contractor's Designated Representative for this Contract is:

Leonard E. Arnold, Jr.
Principal
1615 Edgewater Drive, Suite 180
Orlando, Florida 32804
407-975-1273
Larnold@leainc.com

SECTION 20: WORK ORDERS.

(a) The provision of services to be performed under this Contract may commence immediately upon the execution of this Contract or a Work Order as directed and determined by the CITY. Services to be provided by the CONTRACTOR to the CITY shall be negotiated between the CONTRACTOR and the CITY. Each Work Order shall reference this Contract by title and date, include a detailed description of quantities, services, and a completion schedule, and will be provided on CONTRACTOR letterhead. Services described in said Work Order will commence upon the issuance of a CITY Notice-To-Proceed.

(b) If the services required to be performed by a Work Order is clearly defined, the Work Order shall be issued on a "Fixed Fee" basis. The CONTRACTOR shall perform all services required by the Work Order but in no event shall the CONTRACTOR be paid more than the negotiated Fixed Fee amount stated therein.

(c) The CONTRACTOR and the CITY agree to make every effort to adhere to the schedule established for the various Work Orders described in the Work Order.

(d) If the services are not clearly defined, the Work Order may be issued on a "Time Basis Method" and contain a Not-to-Exceed amount. If a Not-to-Exceed amount is provided, the CONTRACTOR shall perform all work required by the Work Order; but in no event shall the CONTRACTOR be paid more than the Not-to-Exceed amount specified in the applicable Work Order.

(e) For Work Orders issued on a "Fixed Fee Basis," the CONTRACTOR may invoice the amount due based on the percentage of total Work Order services actually performed and completed; but in no event shall the invoice amount exceed a percentage of the Fixed Fee amount equal to a percentage of the total services actually completed.

(f) For Work Orders issued on a "Time Basis Method" with a Not-to-Exceed amount, the CONTRACTOR may invoice the amount due for actual work hours performed; but in no event shall the invoice amount exceed a percentage of the Not-to-Exceed amount equal to a percentage of the total services actually completed.

(g) Each Work Order issued on a "Fixed Fee Basis" or "Time Basis Method" with a Not-to-Exceed amount shall be treated separately for retainage purposes. If the CITY determines that work is substantially complete and the amount retained, if any, is considered to be in excess, the CITY may, at its sole and absolute discretion, release the retainage or any portion thereof.

(h) For Work Orders issued on a "Time Basis Method" with a Limitation of Funds amount, the CONTRACTOR may invoice the amount due for services actually performed and completed. The CITY shall pay the CONTRACTOR one hundred percent (100%) of the approved amount on Work Orders issued on a "Time Basis Method" with a Limitation of Funds amount.

SECTION 21: CHANGE ORDERS.

(a) The CITY may revise the Description of Services set forth in any particular Work Order.

(b) Revisions to any Work Order shall be authorized in writing by the CITY as a Change Order. Each Change Order shall include a schedule of completion for the services authorized. Change Orders shall identify this Contract and the appropriate Work Order number. The Change Orders may contain additional instructions or provisions specific upon certain aspects of this Contract pertinent to the services to be provided. Such supplemental instructions or provisions shall not be construed as a modification of this Contract. An Contract between the parties on and execution of any Change Order shall constitute a final settlement and a full accord and satisfaction of all matters relating to the change and to the impact of the change on unchanged goods and/or work, including all direct and indirect costs of whatever nature, and all adjustments to the CONTRACTOR schedule.

(c) If instructed by the CITY, the CONTRACTOR shall change or revise work that has been performed, and if such work is not required as a result of error, omission or negligence of the CONTRACTOR, the CONTRACTOR may be entitled to additional compensation. The CONTRACTOR must submit for CITY approval a revised Qualification with a revised fee quotation. Additional compensation, if any, shall be agreed upon before commencement of any such additional work and shall be incorporated into the work by Change Order to the Work Order.

SECTION 22: COMPENSATION.

(a) Compensation to the CONTRACTOR for the services performed on each Work Order shall be as set forth the Work Order/Change Order.

(b) The CITY shall not pay for reimbursable items such as gas, tolls, mileage, meals, etc. and other items not directly attributable to items produced for each Work Order.

(c) Work performed by the CONTRACTOR without written approval by the City's Designated Representative shall not be compensated. Any work performed by the CONTRACTOR without approval by the CITY is performed at the CONTRACTOR'S own election.

(d) In the event the CITY fails to provide compensation under the terms and conditions of this Contract, the CONTRACTOR shall notify the City's Designated Representative in order that the CITY may take remedial action.

(f) Pricing has been calculated based on the current prices for the goods and/or services that are the subject of. However, the market for the goods and/or services that pertain to this Contract may be volatile on the basis of fuel costs and sudden and substantial price increases could occur. The CONTRACTOR agrees to use its best efforts to obtain the lowest possible prices from fuel suppliers, but should there be a substantial and prejudicial increase in fuel prices for fuel that is purchased after execution of this Contract which fuel prices directly and materially relate to the pricing of the goods and/or services provided for in this Contract, the CITY agrees, upon written request from the CONTRACTOR, to consider a reasonable adjustment to the prices set forth in this Contract based upon the following index: Engineering News Record, Construction Cost Index, etc.. Any claim by the CONTRACTOR for a price increase, as provided above, shall state, with specificity, the increased cost, the product in question, and the source of supply, and shall be supported by invoices or bills of sale and such other information as may be required by the CITY. Only one (1) such request from the CONTRACTOR will be considered in each calendar year period. The decision of the CITY shall be final and non-appealable.

(g) Expiration of the term of this Contract shall have no effect upon purchase orders/work orders issued pursuant to this Contract and prior to the expiration date.

SECTION 23: INVOICE PROCESS.

(a) Payments shall be made by the CITY to the CONTRACTOR when requested as work progresses for services furnished, but not more than once monthly. Each Work Order shall be invoiced separately. The CONTRACTOR shall render to the CITY, at the close of each calendar month, an itemized invoice properly dated, describing all services rendered, the cost of the services, the name and address of the CONTRACTOR, Work Order Number, Contract Number and all other information required by this Contract.

(b) Invoices which are in an acceptable form to the CITY and without disputable items will be processed for payment within thirty days of receipt by the CITY.

(c) The CONTRACTOR will be notified of any disputable items contained in invoices submitted by the CONTRACTOR within fifteen days of receipt by the CITY with an explanation of the deficiencies.

(d) The CITY and the CONTRACTOR will make every effort to resolve all disputable items contained in the CONTRACTOR'S invoices.

(e) Each invoice shall reference this Contract, the appropriate Work Order and Change Order, if applicable, and the billing period.

(f) The Florida Prompt Payment Act shall apply when applicable.

(g) Invoices are to be forwarded directly to:

Finance Director
City Hall
City of Palm Coast
160 Cypress Point Parkway, Suite B-106
Palm Coast, Florida 32164

SECTION 24: TERMINATION OF CONTRACT.

(a) The CITY may terminate this Contract or any Work Order for convenience at any time for one or more of the reasons as follows:

(1) If, in the CITY'S opinion, adequate progress under a Work Order is not being made by the CONTRACTOR; or

(2) If, in the CITY'S opinion, the quality of the services provided by the CONTRACTOR is/are not in conformance with commonly accepted professional standards, standards of the CITY, the requirements of Federal or State regulatory agencies, and the CONTRACTOR has not corrected such deficiencies in a timely manner as reasonably determined by the CITY; or

(3) The CONTRACTOR or any employee or agent of the CONTRACTOR is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by the CONTRACTOR; or

(4) The CONTRACTOR becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or

(5) The CONTRACTOR violates the Standards of Conduct provisions herein or any provision of State or local law or any provision of the City Code of Conduct.

(b) In the event of any of the causes described in this Section, the City's Designated Representative may send a certified letter requesting that the CONTRACTOR show cause why the Contract or any Work Order should not be terminated. If assurance satisfactory to the CITY of corrective measures to be made within a reasonable time is not given to the CITY within fourteen calendar days of the receipt of the letter, the CITY may consider the CONTRACTOR to be in default, and may immediately terminate this Contract or any Work Order in progress under this Contract.

(c) In the event that this Contract or a Work Order is terminated for cause and it is later determined that the cause does not exist, then this Contract or the Work Order shall be deemed terminated for convenience by the CITY and the CITY shall have the right to so terminate this Contract without any recourse by the CONTRACTOR.

SECTION 25: TERMINATION BY CONTRACTOR FOR CAUSE.

(a) The CONTRACTOR may terminate this Contract if:

(1) The CITY materially fails to meet its obligations and responsibilities as contained in Section 14; City Rights and Responsibilities; or

(2) The CITY fails to pay the CONTRACTOR in accordance with this Contract.

(b) In the event of either of the causes described in Subsection (a), the CONTRACTOR shall send a certified letter requesting that the CITY show cause why the Contract should not be terminated. If adequate assurances are not given to the CONTRACTOR within fourteen calendar days of the receipt of said show cause notice, the CONTRACTOR may consider the CITY to be in default, and may immediately terminate this Contract.

SECTION 26: TERMINATION BY THE CITY WITHOUT CAUSE.

(a) Notwithstanding any other provision of this Contract, the CITY shall have the right at any time to terminate this Contract in its entirety without cause, or terminate any specific Work Order without cause, if such termination is deemed by the CITY to be in the public interest, provided that thirty calendar days prior written notice is given to the CONTRACTOR of the CITY'S intent to terminate.

(b) In the event that this Contract is terminated, the CITY shall identify any specific Work Order(s) being terminated and the specific Work Order(s) to be continued to completion pursuant to the provisions of this Contract.

(c) This Contract will remain in full force and effect as to all authorized Purchase Order(s)/Work Order(s) that is/are to be continued to completion.

SECTION 27: PAYMENT IN THE EVENT OF TERMINATION.

In the event this Contract or any Work Order is terminated or canceled prior to final completion payment for the unpaid portion of the services provided by the CONTRACTOR to the date of termination and any additional services shall be paid to the CONTRACTOR.

SECTION 28: ACTION FOLLOWING TERMINATION.

Upon receipt of notice of termination, given by either party, the terminated party shall promptly discontinue the provision of all services, unless the notice provides otherwise.

SECTION 29: SUSPENSION.

(a) The performance or provision of the CONTRACTOR services under any Work Order under this Contract may be suspended by the CITY at any time.

(b) In the event the CITY suspends the performance or provision of the CONTRACTOR'S services hereunder, the CITY shall so notify the CONTRACTOR in writing. Such suspension becoming effective upon the date stated in the notice. The CITY shall pay to the CONTRACTOR within thirty days all compensation which has become due to and payable to the CONTRACTOR to the effective date of such suspension. The CITY shall thereafter have no further obligation for payment to the CONTRACTOR for the suspended provision of services unless and until the City's designated representative notifies the CONTRACTOR in writing that the provision of the

services of the CONTRACTOR called for hereunder are to be resumed by the CONTRACTOR.

(c) Upon receipt of written notice from the CITY that the CONTRACTOR'S provision of services hereunder are to be resumed, the CONTRACTOR shall continue to provide the services to the CITY.

SECTION 30: ALTERNATIVE DISPUTE RESOLUTION (ADR).

(a) In the event of a dispute related to any performance or payment obligation arising under this Contract, the parties agree to exhaust any alternative dispute resolution procedures reasonably imposed by the CITY prior to filing suit or otherwise pursuing legal remedies.

(b) The CONTRACTOR agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration to the CITY in alternative dispute resolution procedures or which the CONTRACTOR had knowledge and failed to present during the CITY procedures.

(c) In the event that CITY procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

SECTION 31: SEVERABILITY.

(a) If any term, provision or condition contained in this Contract shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision, and condition of this Contract shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.

(b) All provisions of this Contract shall be read and applied in Pari Materia with all other provisions hereof.

(c) Violation of this Contract by the CONTRACTOR is recognized by the parties to constitute irreparable harm to the CITY.

SECTION 32: CONTROLLING LAWS/VENUE / INTERPRETATION.

(a) This Contract is to be governed by the laws of the State of Florida.

(b) Venue for any legal proceeding related to this Contract shall be in the Seventh Judicial Circuit Court in and for Flagler County, Florida.

(c) This Contract is the result of bona fide arms length negotiations between the CITY and the CONTRACTOR and all parties have contributed substantially and materially to the preparation of the Contract. Accordingly, this Contract shall not be construed or interpreted more strictly against any one party than against any other party.

SECTION 33: INDEMNITY.

(a) CONTRACTOR shall indemnify and hold harmless the City, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of the Contract.

(b) Nothing herein shall be deemed to affect the rights, privileges, and immunities of the CITY as set forth in Section 768.28, Florida Statutes.

(c) In claims against any person or entity indemnified under this Section by an employee of the CONTRACTOR or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or its agents or subcontractors, under Workers Compensation acts, disability benefits acts, or other employee benefit acts.

(d) The execution of this Contract by the CONTRACTOR shall obligate the CONTRACTOR to comply with the indemnification provision in this Contract; however, the CONTRACTOR must also comply with the provisions of this Contract relating to insurance coverage's.

SECTION 34: INSURANCE.

(a) The CONTRACTOR shall obtain or possess and continuously maintain the following insurance coverage, from a company or companies, with a Best Rating of A- or better, authorized to do business in the State of Florida and in a form acceptable to the CITY and with only such terms and conditions as may be acceptable to the CITY:

(1) Workers Compensation/Employer Liability: The CONTRACTOR shall provide Worker Compensation insurance for all employees engaged in the work under this Contract in accordance with the laws of the State of Florida. Employers' Liability Insurance at limits not less than the following:

\$500,000 Each Accident
\$500,000 Disease Each Employee
\$500,000 Disease (Policy Limit)

(2) Comprehensive General Liability: The CONTRACTOR shall provide coverage for all operations including, but not limited to, contractual, independent CONTRACTOR, products and complete operations and personal injury with limits not less than the following:

\$1,000,000 Bodily Injury & Property Damage - each occurrence
\$2,000,000 General Aggregate

(3) Comprehensive Business Automobile Liability: The CONTRACTOR shall provide complete coverage with a combined single limit of not less than \$1,000,000 Bodily Injury and Property Damage in accordance with the laws of the State of Florida, as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles.

(4) Professional Liability: The Contractor shall provide professional liability insurance as well as errors and omission insurance in a minimum amount of \$1,000,000 CSL or its equivalent, with a combined single limit of not less than \$1,000,000, protecting the Contractor against claims of the City for negligence, errors, mistakes, or omissions in the performance of services to be performed and furnished by the Contractor.

(5) Other Required Insurance Coverage: Where unusual operations are necessary to complete the work, such as use of aircraft or watercraft, use of explosives, and any high risk circumstances. No aircraft, watercraft or explosives shall be used without the express advance written approval of the CITY which may, thereupon, required additional insurance coverage's.

(b) All insurance other than Workers Compensation and Professional Liability that must be maintained by the CONTRACTOR shall specifically include the CITY as an additional insured. All insurance minimum coverage's extend to any subcontractor, and the CONTRACTOR shall be responsible for all subcontractors.

(c) The CONTRACTOR shall provide Certificates of Insurance to the CITY evidencing that all such insurance is in effect prior to the issuance of the first Work Order under this Contract. These Certificates of Insurance shall become part of this Contract. Neither approval by the CITY nor failure to disapprove the insurance furnished by a CONTRACTOR shall relieve the CONTRACTOR of the CONTRACTOR'S full responsibility for performance of any obligation including the CONTRACTOR'S indemnification of the CITY under this Contract. If, during the period which an insurance company is providing the insurance coverage required by this Contract, an insurance company shall: (1) lose its Certificate of Authority, (2) no longer comply with Section 440.57, Florida Statutes, or (3) fail to maintain the requisite Best's Rating and Financial Size Category, the CONTRACTOR shall, as soon as the CONTRACTOR has knowledge of any such circumstance, immediately notify the CITY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Contract. Until such time as the CONTRACTOR has replaced the unacceptable insurer with an insurer acceptable to the CITY, the CONTRACTOR shall be deemed to be in default of this Contract.

(d) The insurance coverage shall contain a provision that requires that prior to any changes in the coverage, except increases in aggregate coverage, thirty days prior notice will be given to the City by submission of a new Certificate of Insurance.

(h) The CONTRACTOR shall provide Certificate of Insurance directly to the City's Designated Representative. The certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount, and classification required by this Contract.

(f) Nothing in this Contract or any action relating to this Contract shall be construed as the CITY waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes.

(g) The CITY shall not be obligated or liable under the terms of this Contract to any party other than the CONTRACTOR. There are no third party beneficiaries to this Contract.

(h) The CONTRACTOR is an independent Contractor and not an agent, representative, or employee of the CITY. The CITY shall have no liability except as specifically provided in this Contract.

(i) All insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by the CITY.

SECTION 35: EQUAL OPPORTUNITY EMPLOYMENT/NON-DISCRIMINATION.

The CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment for work under this Contract because of race, color, religion, sex, age, national origin, or disability and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or their forms or compensation; and selection for training, including apprenticeship. The CONTRACTOR, moreover, shall comply with all the requirements as imposed by the Americans with Disability Act, the regulations of the Federal government issued thereunder, and any and all requirements of Federal or State law related thereto.

SECTION 36: ACCESS TO RECORDS/AUDIT/PUBLIC RECORDS.

(a) The CONTRACTOR shall maintain books, records, documents, time and costs accounts, and other evidence directly related to its provision or performance of services under this Contract. All time records and cost data shall be maintained in accordance with generally accepted accounting principles.

(b) The CONTRACTOR shall maintain and allow access to the records required under this Section for a minimum period of five years after the completion of the provision or performance services under this Contract and date of final payment for said services, or date of termination of this Contract.

(c) The City reserves the right to unilaterally terminate this Contract if the CONTRACTOR refuses to allow public access to all documents, papers, letters, or other materials subject to provisions of Chapter 119, Florida Statutes, and other applicable law, and made or received by the CONTRACTOR in conjunction, in any way, with this Contract.

(d) The CITY may perform, or cause to have performed, an audit of the records of the CONTRACTOR before or after final payment to support final payment under any Work Order issued hereunder. This audit shall be performed at a time mutually agreeable to the CONTRACTOR and the CITY subsequent to the close of the final fiscal

period in which services are provided or performed. Total compensation to the CONTRACTOR may be determined subsequent to an audit as provided for in this Section, and the total compensation so determined shall be used to calculate final payment to the CONTRACTOR. Conduct of this audit shall not delay final payment as required by this Section.

(e) In addition to the above, if Federal, State, County, or other entity funds are used for any services under this Contract, the Comptroller General of the United States or the Chief Financial Officer of the State of Florida, City of Palm Coast, or the County of Flagler, or any representative, shall have access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to services provided or performed under this Contract for purposes of making audit, examination, excerpts, and transcriptions.

(f) In the event of any audit or inspection conducted reveals any overpayment by the CITY under the terms of the Contract, the CONTRACTOR shall refund such overpayment to the CITY within thirty days of notice by the CITY of the request for the refund.

(g) The CONTRACTOR agrees to fully comply with all State laws relating to public records.

(h) The CONTRACTOR agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

SECTION 37: COUNTERPARTS.

This Contract may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

SECTION 38: SUBMITTALS.

The following are items the CONTRACTOR must submit to the CITY as stated in this Contract:

- 1 Description of Services; Section 12.
- 2 Worker compensation insurance for all employees; Section 34, Paragraph (a) (1)
- 3 Certificates of Liability Insurance; Section 34, Paragraph (c)
- 4 American with Disabilities Act; Section 17, Paragraph (f)
- 5 Price Schedule
- 6 Business Tax Receipt (If applicable)

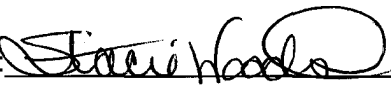
This Contract describes each item listed above in detail. All provided to the CITY must be accurate and updated certifying the CONTRACTOR is proceeding correctly.

SECTION 39: EXHIBITS.

Each Exhibit referred to and attached to this Contract is an essential part of this Contract. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Contract.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract on the respective dates under each signature.

ATTEST/WITNESS:

By: 


Date: 5/28/14

**LITTLEJOHN ENGINEERING
ASSOCIATES, INC.**

By: 
Authorized Corporate Officer

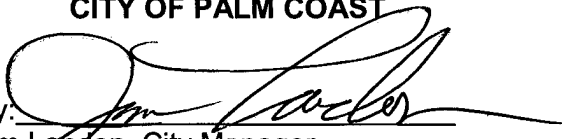
Date: 5/28/2014

ATTEST:

By: 
Virginia Smith, City Clerk


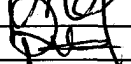
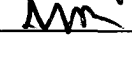

Date: 6/27/14

CITY OF PALM COAST

By: 
Jim Landon, City Manager

Date: 6/27/14

Approved by (Signature and date):

<u></u>	<u>6</u>	<u>10/14</u>
<u></u>	<u>6</u>	<u>10/14</u>
<u></u>	<u>6</u>	<u>27/14</u>
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Responsible Department Director
City Finance
PCMD
City Attorney

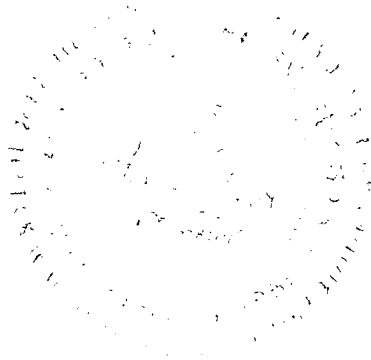


EXHIBIT A

Description/Scope of Services

SCOPE OF SERVICES

The scope of work to be performed under work orders issued under the continuing contracts may consist of, but will not necessarily be limited to, tasks similar to the following:

Landscape Design

- Planting Plans
- Hardscape Plans
- Irrigation Plans
- Streetscape Plans
- Decorative Lighting Plans
- Amenity Package Plans
- Corridor Design Master Plans

Park Design

- Park Master Plans
- Infrastructure Plans
- Signage Plans
- Pathway Plans
- Recreational Facility Plans

Landscape Consultation

- Florida Friendly Plant Materials
- Arbor Preservation
- Code Input
- Engineering Interface
- Plant Material Identification
- Private Project Review

The City reserves the right to order such services from selected firms as may be required during said period, but does not guarantee any minimum or maximum services to be ordered during the period specified from any given firm. Work service assignments shall be at the sole discretion of the City. The selected firms shall be responsible for knowledge of and compliance with all relative local, state and Federal codes and regulations.

**EXHIBIT C
DRAFT
WORK ORDER FORM**



WORK ORDER-SERVICES# _____

Encumbrance PO Number: _____

City of Palm Coast (Buyer)

Resolution

#: _____

Vendor Name:	Date:
Address:	Bid #:
City, State & Zip:	Project: Council Approval Date:

Budgeted/Existing: _____
Service: _____

New: _____

Continuing

Mail Invoices in duplicate to:

City of Palm Coast

Total Cost: \$ _____

Palm Coast, Florida 321 _____

ATTACHMENTS TO THIS WORK ORDER:

- ☐ Description of Services
- ☐ Drawings/Plans/Specifications
- ☐ Special Conditions
- ☐ Rate Schedule

METHOD OF COMPENSATION:

- ☐ Fixed Fee Basis
- ☐ Not To Exceed
- ☐ Unit Price

TIME FOR COMPLETION: The obligation of the Vendor to provide services to the City shall commence upon execution of this Work Order (WO) by the parties and services shall be completed by _____. Failure to meet the completion date may be grounds for termination of this WO and the underlying contract for default. Time is of the essence.

WITNESS WHEREOF, the parties hereto have made and executed this Work Order on this _____ day of _____, 20____, for the purposes stated herein.

(THIS SECTION TO BE COMPLETED BY THE CITY)

ATTEST:

Vendor

, Attesting Officer

Officer with Corporate Signatory Authority

Date: _____

WITNESSES:

Department Head approved RAP on _____

CITY OF PALM COAST

Authorized Signatory

WORK ORDERS TERMS AND CONDITIONS

- Execution of this Work Order (WO) by the City shall serve as authorization for the Vendor to provide for the stated services as set out in this WO. It is expressly understood by the Vendor that this WO, until executed by the City, does not authorize the Vendor to perform any services for the City.
- This WO shall take effect on the date of its execution by the City and expires upon final completion, inspection and payment unless terminated earlier in accordance with the termination provisions herein. The Vendor shall sign this WO first and the City second. This WO will be forwarded to the Vendor upon execution by the City.
- The Vendor shall provide services pursuant to this WO, its attachments, and the underlying Agreement (as amended, if applicable) which is incorporated herein by reference as if it had been set out in its entirety. In the event that the terms and conditions of this WO are inconsistent with the terms and conditions of an underlying contract which is implemented, in whole or part, by this WO; then the terms and conditions of the underlying contract shall apply.
- Compensation is based on the method indicated on the first page of this WO.
- Payments to the Vendor shall be made by the City in strict accordance with the payment terms and conditions listed below or in the underlying contract.
- By accepting this WO, the Vendor accepts all the terms and conditions included herein.
- The City reserves the right, without liability of any type, to cancel this WO as to any services not yet performed or tendered, and to purchase substitute services and to charge the Vendor for any loss incurred.
- The City may cancel this WO, any outstanding services hereunder, or reschedule in whole or in part, for cause or no cause, upon written notice to the Vendor sent at least fourteen (14) days prior to the completion date specified. The City may cancel this WO in whole or in part at any time for default by written notice to the Vendor.
- The City shall have no liability to the Vendor beyond payment of any balance owing for services completed hereunder and accepted by the City prior to the Vendor's receipt of the notice of termination.
- Prices stated on this WO are firm, all inclusive and consistent with applicable negotiations, bid(s) and/or quotations. The City is exempt from the Florida sales and use taxes and will furnish the Vendor with proof of tax exemption upon written request.
- The City reserves the right to conduct any inspection or investigation to verify compliance of the services with the requirements of this purchase and to reject any delivery not in compliance and, if the deficiency is not visible at the time of acceptance, to take and require appropriate corrective action.
- The Vendor agrees to comply with all Federal, State of Florida, Flagler County and City laws, ordinances, regulations, authority and codes and authority having jurisdiction over the purchase.

This WO shall be governed by and interpreted in accordance with the laws of the State of Florida. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue shall be of the Seventh Judicial Circuit in and for Flagler County, Florida.

- The Vendor shall indemnify, hold harmless, and defend the CITY, from and against any and all claims, damages, losses, and expenses including, but not limited to, attorney's fees, arising out of or resulting from the performance or provision for services required under this Agreement, including damage to persons or property, provided that same is caused in whole or part by the error, omission, negligent act, failure to act, malfeasance, misfeasance, conduct, or misconduct of CONTRACTOR, its agents, servants, officers, officials, employees, or subcontractors. Nothing herein shall be deemed to affect the rights, privileges, and immunities of the CITY as set forth in Section 768.28, Florida Statutes.
- The Vendor shall not assign this WO, any rights under this WO or any monies due or to become due hereunder, nor delegate or subcontract any obligations or work hereunder without the prior written consent of the City.
- The Vendor shall perform the obligations of this WO as an independent contractor and under no circumstances shall it be considered as agent or employee of the City.
- The Vendor ensures that its personnel shall comply with reasonable conduct guidelines and City policies and procedures. A person or affiliate who has been placed on the convicted vendor list may not submit a bid or transact business with the City in excess of Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. In compliance with 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act (INA)], the City will not intentionally make an award or upon discovery of a violation will unilaterally cancel this WO with any vendor who knowingly employs unauthorized alien workers.
- If this WO involves the Vendor's performance on the City's premises or at any place where the City conducts operations, the Vendor shall request information from the Purchasing Manager regarding insurance coverage requirements. Noncompliance with this item shall place the Vendor in default and subject to disbarment from the City's Vendor List.
- The failure of the City to enforce any provision of this WO, exercise any right or privilege granted to the City hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

EXHIBIT E
Price Schedule

Position	Hourly Rate
Principal	\$240.00
Sr Project Manager	\$195.00
Project Manager	\$165.00
Director of Landscape Architecture	\$240.00
Sr Landscapae Architect	\$150.00
Landscape Architect	\$125.00
Jr Landscape Architect	\$95.00
Sr Project Engineer	\$145.00
Project Engineer	\$135.00
Engineering Intern	\$95.00
Planning Director	\$185.00
Sr Planner	\$145.00
Planner	\$110.00
Jr Planner	\$90.00
CADD Designer / Intern	\$60.00
Administrative	\$85.00

EXHIBIT F
Business Tax Receipt (If Applicable)

Not Applicable

CORPORATE INFORMATION

1

State of Florida Department of State

I certify from the records of this office that LITTLEJOHN ENGINEERING ASSOCIATES, INC. is a Tennessee corporation authorized to transact business in the State of Florida, qualified on March 26, 2008.

The document number of this corporation is F08000001349.

I further certify that said corporation has paid all fees due this office through December 31, 2014, that its most recent annual report/uniform business report was filed on January 27, 2014, and its status is active.

I further certify that said corporation has not filed a Certificate of Withdrawal.

*Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this
the Twenty-seventh day of
January, 2014*



Ken Detjen
Secretary of State




Authentication ID: CC6630087172

To authenticate this certificate, visit the following site, enter this ID, and then follow the instructions displayed.

<https://efile.sunbiz.org/certauthver.html>

CORPORATE INFORMATION

1

RICK SCOTT, GOVERNOR	STATE OF FLORIDA	KEN LAWSON, SECRETARY				
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION BOARD OF LANDSCAPE ARCHITECTURE						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; background-color: black; color: white;">LICENSE NUMBER</td> <td></td> </tr> <tr> <td>LC26000452</td> <td></td> </tr> </table>			LICENSE NUMBER		LC26000452	
LICENSE NUMBER						
LC26000452						
<p>The LANDSCAPE ARCHITECT BUSINESS Named below HAS REGISTERED Under the provisions of Chapter 481 FS. Expiration date: NOV 30, 2015</p>						
						
						
<p>LITTLEJOHN ENGINEERING ASSOCIATES, INC. 1615 EDGEWATER DRIVE SUITE 180 ORLANDO FL 32804</p>						
						
<p>ISSUED: 11/12/2013 SEQ # L1311120001164 DISPLAY AS REQUIRED BY LAW</p>						


<h1 style="margin: 0;">State of Florida</h1> <h2 style="margin: 0;">Board of Professional Engineers</h2> <p style="margin: 0;">Attests that</p> <h2 style="margin: 0;">Littlejohn Engineering Associates</h2>		
		
<p>is authorized under the provisions of Section 471.023, Florida Statutes, to offer engineering services to the public through a Professional Engineer, duly licensed under Chapter 471, Florida Statutes.</p>		
<p>Expiration: 2/28/2015 Audit No: 228201502475</p>	<p>Certificate of Authorization</p>	<p>CA Lic. No: 28050</p>

EXHIBIT G
Vendor Registration Form

Not Applicable



CERTIFICATE OF LIABILITY INSURANCE

LITTEN1

OP ID: AR

DATE (MM/DD/YYYY)

06/26/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Martin & Zeffoss, Inc. P.O.Box 121587 Nashville, TN 37212 Michael R. Martin		CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL: ADDRESS:		FAX (A/C, No):
INSURED Littlejohn Engineering Associates, Inc. 1935 Twenty First Ave South Nashville, TN 37212		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A: Cincinnati Insurance Co		10677
		INSURER B: Accident Fund		10166
		INSURER C:		
		INSURER D:		
		INSURER E:		
INSURER F:				

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER: 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	X		EPP0155321	08/18/2013	08/18/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			EBA0155321	08/18/2013	08/18/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (PER ACCIDENT) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			EPP0155321	08/18/2013	08/18/2014	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N/A		WCV6084898	08/18/2013	08/18/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Additional insured, waiver of subrogation and primary & non-contributory language provided by the GA233, Contractors Broadened Endorsement.

CERTIFICATE HOLDER

CANCELLATION

CITYPAL City of Palm Coast 160 Cypress Point Pkwy #B-106 Palm Coast, FL 32164	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Michael R. Martin</i>

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CERTIFICATE OF LIABILITY INSURANCE

NORN

DATE (MM/DD/YYYY)

3/4/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Crow, Friedman Group 5141 Wheelis Dr. Memphis, TN 38117 (901) 820-0400		CONTACT NAME: Noreen K. Nelson PHONE (A/C, No. Ext.): (615) 383-0072 FAX (A/C, No.): (615) 297-4020 E-MAIL ADDRESS: noreen@crowfriedman.com PRODUCER CUSTOMER ID #: LITTENG-01	
INSURED Littlejohn Engineering Associates Inc. 1935 Twenty-First Ave. South Nashville, TN 37212-4144		INSURER(S) AFFORDING COVERAGE INSURER A: XL Specialty Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
RECEIVED ON MAR 14 '14 CITY OF PALM COAST		NAIC # 37885	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY					
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY					EACH OCCURRENCE \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence) \$
						MED EXP (Any one person) \$
						PERSONAL & ADV INJURY \$
						GENERAL AGGREGATE \$
	GEN'L AGGREGATE LIMIT APPLIES PER:					PRODUCTS - COMP/OP AGG \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC					AND COVERAGES \$
	AUTOMOBILE LIABILITY					
	<input type="checkbox"/> ANY AUTO					COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ALL OWNED AUTOS					BODILY INJURY (Per person) \$
	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS					PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> NON-OWNED AUTOS					\$
						\$
	UMBRELLA LIAB	<input type="checkbox"/> OCCUR				EACH OCCURRENCE \$
	EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$
	DEDUCTIBLE					\$
	RETENTION \$					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	<input type="checkbox"/> Y/N				WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/>	N/A			E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability		DPR9714021	3/3/2014	3/3/2015	Each Claim \$1,000,000
A	Professional Liability		DPR9714021	3/3/2014	3/3/2015	Annual Aggregate \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

CANCELLATION

City of Palm Coast
 Purchasing & Contracts Mgmt. Division
 160 Cypress Point Parkway, Suite B-106
 Palm Coast, FL 32184

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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EXHIBIT “B”

AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 19th day of February in the year 2018
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

City of Palm Coast
160 Lake Avenue
Palm Coast, FL 32164

and the Construction Manager:
(Name, legal status and address)

BBI Construction Management, Inc.
4639 NW 53rd Avenue
Gainesville, FL 32653

for the following Project:
(Name and address or location)

Holland Park Phase 2 Improvements
18 Florida Park Dr N, Palm Coast, FL 32164

The Architect:
(Name, legal status and address)

Joseph Pozzuoli Architect
Joseph D. Pozzuoli, Principal
314 Moody Boulevard
Flagler Beach, FL 32136

S&ME
Jay Hood, Director of Landscape Architecture
1615 Edgewater Drive
Orlando, FL 32804

The Owner's Designated Representative:
(Name, address and other information)

Jim Landon, City Manager
160 Lake Avenue
Palm Coast, FL 32164

The Construction Manager's Designated Representative:
(Name, address and other information)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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This document was produced by AIA software at 16:15:58 on 02/19/2018 under Order No.7935688977 which expires on 02/19/2019, and is not for resale.
User Notes:

(1345476916)

The Architect's Designated Representative:
(Name, address and other information)

| Joseph Pozzuoli Architect, Joseph Pozzuoli, AIA, ID, ICAA

| S&ME, Carrie E. Read, PLA, ASLA

The Owner and Construction Manager agree as follows.

DS nit.

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This document was produced by AIA software at 16:15:58 on 02/19/2018 under Order No.7935688977 which expires on 02/19/2019, and is not for resale.
User Notes:

(1345476916)

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218. Et Seq.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

§ 1.4 The Construction Manager shall perform the Preconstruction Services, shall be responsible for coordinating the activities of construction during the Construction Phase, shall be fully responsible for discharging all of the Construction Manager's obligations under the Contract Documents, and, during the Preconstruction and Construction Phases, shall advise and work with the Project Team, consisting of the Construction Manager, the Owner and the Architect, and all consultants and Subcontractors of any tier employed or retained by each of them, to make recommendations for alternate or substitute technologies, construction techniques, methods and practices based on maintainability and durability as well as cost savings, time saving and/or other related efficiencies. The Owner will be responsible for coordinating the activities of the Project Team during the Preconstruction Phase.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall jointly schedule and conduct meetings with the Architect and Owner every two weeks during Schematic Design and Design Development phases and weekly during the Construction Document phase to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements; phasing and site work planning; sequencing and scheduling for procurement, installation and construction; traffic planning; factors related to construction quality, maintainability and durability; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, value engineering and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. The Construction Manager will be responsible for the Construction Schedule, subject to the Owner's approval, and shall control the method and sequencing of all construction activities.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 The Construction Manager will collaborate with the Architect and Owner on cost estimates throughout the Preconstruction Phase. As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action, including participation in preparing a list of proposed cost savings to endeavor to achieve savings equal to or greater than the overage, and the Architect will, if requested by the Owner, modify the design to meet the Owner's budget.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications prepared by the Architect are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. The Construction Manager shall review upon receipt the Drawings and Specifications submitted to it; however, the Construction Manager shall not be liable for errors, omission and issues with such design documents. The Construction Manager shall promptly report to the Owner and the Architect any error, inconsistency or omission that the Construction Manager may discover in them and may recommend changes and alternatives for the Architect's consideration. The Construction Manager's review shall be made in the Construction Manager's capacity as a contractor and not as a licensed design professional.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.1.10 The Construction Manager shall also provide the following preconstruction services:

- .1 The Construction Manager will submit for approval by the Architect and the City's Representatives applicable cost, sustainability, energy and time savings programs.
- .2 The Construction Manager will provide life cycle cost estimating for effective evaluation of options.
- .3 The Construction Manager will review design/construction documents for constructability and identify any defects or ambiguities and submitting recommended alternatives.
- .4 The Construction Manager will coordinate with the Architect to finalize the construction documents.
- .5 The Construction Manager will review the current budget issues and guarantee a maximum price based on the one-hundred percent (100%) complete Construction Documents and successful negotiations with the City. The Guaranteed Maximum Price will include the Construction Manager fees for his construction services.
- .6 The Construction Manager will establish the master project schedule identifying all different phases

and all milestone items. Provide all projects scheduling as defined above, including the Development of a CPM type master schedule for all significant activities during the pre-construction period. Also, prepare a CPM type master construction schedule for inclusion in the construction contract documents. Assist the City and the design consultant in determining the feasibility of issuing of early bid packages.

- .7 The Construction Manager will solicit responsible Trade Contractors and Suppliers interested in bidding on the project.
- .8 The Construction Manager will provide all permitting applications and requirements as needed.
- .9 The Construction Manager will schedule and conduct pre-bid conferences with the interested subcontractors, material suppliers, and equipment suppliers.
- .10 The Construction Manager will identify different bid packages that will represent the entire scope of work.
- .11 The Construction Manager will accept, review, and award bids to qualified subcontractors, based on the bid packages identified.
- .12 The Construction Manager will contract with all subcontractors, material suppliers, and equipment suppliers necessary for the proposed construction work.
- .13 The Construction Manager will coordinate with the Architect and/or City's Representative to schedule and conduct pre-construction meetings with subcontractors.
- .14 The Construction Manager will set procedures for cost and time control updates and Develop and maintain systems for reporting and retrieval of project information.
- .15 Effective March 6, 2007, all private contractors, vendors, employees of private contractors or vendors, repair persons and delivery persons involved in the road improvement projects and other projects, as determined by the City Manager, when work being accomplished on or proximate to schools or parks shall be subject to the screening requirements of Section 2-73, Code of Ordinances of the City of Palm Coast. Perform all background checks on all workers accessing the site. Be advised, all Contractors and subcontractors shall have their employees who will be working on project sites undergo criminal history background screenings and be verified through the Florida Department of Law Enforcement's Sexual Offender/Predator Database (<http://offender.fdle.state.fl.us/offender/homepage.do>) and the National Sex Offender Register (<http://www.nsopr.gov/>). Construction Manager shall be required to badge all cleared employees and no employee shall be allowed onto a project site until they have been badged. Badges must be clearly visible and worn at all times at the project site. Once employees have been cleared, CONTRACTOR shall supply to the Project Manager a current and complete list of all employees who have passed the screening and who will be working on the project site. This list must be updated and supplied to the Project Manager on an ongoing basis due to general attrition activities. If employees are found to be in non-compliance with the above requirements, the CONTRACTOR shall confiscate that employee's badge, remove that employee from the project site immediately, and provide the City (Project Manager) with an updated approved employee list.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. Savings shall accrue and be available for use in the same manner as the Construction Manager's contingency, but accrual of Savings into contingency shall not increase the Guaranteed Maximum Price. The Construction Manager shall have full use of the Construction Manager's Contingency to pay for any items which are within the definition of the Cost of the Work as set forth in this Agreement. In the event the Construction Manager intends to use the Construction Manager's Contingency for an item which has a cost is in excess of Five Thousand Dollars (\$5,000), then for such item the Construction Manager will first seek the Owner's consent which consent shall not be unreasonably withheld by Owner. This Contingency is not available for Owner directed design or scope changes, unforeseen or differing site conditions, and design errors or omissions beyond the reasonable inferences described in Section 2.2.2. The Construction Manager shall provide the Owner with monthly reports which identifies the use, amount and balance of the Construction Manager's Contingency.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect, and the Owner. For each subcontract bid, Construction Manager will provide Owner with an opportunity to have removed any bidder from Construction Manager's proposed list of bidders. The Construction Manager shall be solely responsible for the acceptance, review, and award of bids to qualified responsive and responsible Subcontractors. Nothing contained in this Agreement or in any contract document does or shall create any contractual relationship between the Owner and any Subcontractor. Owner and Construction Manager understand, acknowledge and agree that Construction Manager is not acting as an agent for the Owner with respect to any Subcontractor or in the procurement of subcontracts, and the procurement of subcontracts will not otherwise be considered as part of a public procurement process. Owner shall not be responsible for Subcontractor performance.

§ 2.3.2.2 NOT USED.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager intends to award a subcontract to a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship prior to award and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007 and other Contract Documents. The Construction Manager shall provide regular monitoring and shall update monthly (or sooner in the event of a substantial change) the Construction Schedule as Work progresses.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The information on the log does not constitute notice of a potential or actual Claim to the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.3.2.9 The Construction Manager will be required to participate in City of Palm Coast's "City's Direct Purchase Program", communicating and cooperating with staff and any additional contractors that the City may choose to employ.

§ 2.3.2.10 The Construction Manager shall obtain the necessary entitlements related to construction, such as

building permits.

§ 2.3.2.11 The Construction Manager will coordinate surveyors, special consultants, and testing lab services contracted by the City as required.

§ 2.3.2.12 The Construction Manager will coordinate site construction management services including, but not limited to:

- Regular weekly job site meetings.
- Maintain daily onsite project log and schedule report which shall include verification of background badge check.
- Oversee quality assurance testing and inspection programs. Review testing, inspection, and commissioning reports. Resolve deficient work with subcontractor.
- Monitor construction management staff and subcontractor work performance for deficiencies
- Maintain record copy of all contract documents, change order, and other documentation on site
- Institute and administer procedures for processing shop drawings and sample submittals in an efficient and timely manner. Review all shop drawings and submittals and take appropriate action prior to forwarding to the Design Professional. Oversee construction management staff and subcontractor safety programs.
- Staff this project in a satisfactory manner.
- Update and maintain master project schedules, detailed construction schedules, submittal schedules, inspection schedules, and occupancy schedules.
- Prepare a schedule of values associated with each bid package identified and submit for approval by the Architect and/or City's Representative. All payment requests must be in accordance with the approved schedule of values.
- Process payment requests for approval by the Architect and/or the City's Representative.
- Process any change orders for approval by the Architect and/or the City's Representative including a detailed cost estimate of the proposed change.
- Process Requests for Information (RFI) and coordinate with the Architect and/or City. • Provide construction program accounting and reporting to the City on a monthly basis and as requested.
- Monitor for the presence of asbestos containing building materials and assure the City that no asbestos containing material has been used.
- Coordinate with the Architect and/or City the final inspection prior to the Architect's and/or City's approval and issuance of the Certificate of Substantial Completion and the Certificate of occupancy.

§ 2.3.2.13 The Construction Manager will coordinate project closeout, start-up, field training, and transition to operation.

§ 2.3.2.14 The Construction Manager will coordinate with the Architect to provide a complete project record including providing final project manual and reproducible drawings corrected to show all construction changes, additions, and deletions compared to the construction documents and shall deliver all such documents to Owner at the completion of the Project.

§ 2.3.2.15 The Construction Manager will coordinate with the Architect and/or City to prepare and submit for approval by the City the Final Certificate of Completion.

§ 2.3.2.16 The Construction Manager will obtain and review for completeness, have corrected if necessary, and submit to the City following the Architect's approval all warranties, operations and maintenance manuals, and other such documents.

§ 2.3.2.17 The Construction Manager will coordinate and conduct the one (1) year Building Warranty Inspection.

§ 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents (and Florida's Prompt Payment Act, Florida Statutes Section 218. Et Seq.) require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness.

§ 3.1.5 The Owner shall only communicate with Subcontractors through the Construction Manager.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to public construction in the jurisdiction of the Project.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in the Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**§ 4.1 Compensation**

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Construction Manager shall be paid a lump sum fee of \$40,100.00 (forty thousand one hundred dollars and no cents) for preconstruction services. Payments shall be made in equal monthly payments during the design phase based upon the master project schedule.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within five (5) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made in equal monthly payments to services performed.

§ 4.2.2 Upon presentation of the Construction Manager's Invoice, payments are payable in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218 Et Seq.

The Parties agree to comply with the Local Government Prompt Payment Act, Florida Statute Section 218.70. (Insert rate of monthly or annual interest agreed upon.)

Prime plus 1 percent

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

Six and three quarter percent (6.75%) of the estimated Cost of the Work plus the Construction Manager's Contingency, which shall be converted to a Lump Sum when the Guaranteed Maximum Price is mutually agreed upon as provided herein. The Fee shall be paid in accordance with Section 7.1.7.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

The Construction Manager's Fee shall be increased on account of Changes in the Work by an amount equal to seven percent (7%) of the Cost of the Change determined in accordance with Subparagraph 7.3.3.3 of the General Conditions.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Subcontractors and sub-subcontractors shall be limited to no more than fifteen percent (15%) for overhead and profit combined for work performed by their own forces. Subcontractors shall be limited to ten percent (10%) for overhead and profit combined for work performed by sub-subcontractors.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed fifty percent (50 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

If, upon completion of the Project, the Actual Cost of the Work plus the Construction Manager's Fee is less than the Guaranteed Maximum Price, as set forth herein and as adjusted by Change Orders, the Owner shall pay the Construction Manager an amount equal to twenty percent (20 %) of such savings as additional compensation.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts and the Contract Documents.

(Paragraphs deleted)

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean the costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost which approval shall not be unreasonably withheld. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval times a multiplier of 1.65 to compensate the Construction Manager for the items enumerated in Clause 6.2.4 below. Wages or salaries of the Construction Manager's home office personnel performing the functions of Construction Supervisor (including Project Executive), Estimating, Scheduling, Purchasing, Accounting, Cost Control, Legal and Safety times a multiplier of 1.65 to compensate the Construction Manager for the items enumerated in Clause 6.2.4 below and the associated office overhead.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work times the appropriate multiplier referenced in Clause 6.2.2 above.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, Construction Manager's standard fringe benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. The Construction Manager shall maintain a procedure for the review, processing and payment of

applications by the Subcontractors for progress and final payments, all in accordance with the terms and conditions of the Contract Documents. The Construction Manager shall verify the completeness of all applications for payment and assemble and check all supporting documentation required by the Contract Documents or by the subcontracts with respect to each Application for Payment, including all lien waivers and releases.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, may be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of the Construction Manager's insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager

resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between or including the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.6.11 The Construction Manager shall also be compensated for costs, including any administrative costs, for compliance with any public records requests, including public record requests pursuant to FS 119.0701. Such costs incurred after project closeout shall not be subject to the Guaranteed Maximum Price, and shall be reimbursed by the Owner within 30 days of Construction Manager invoicing the Owner for such costs. The Parties agree to comply with the following public records law;

In accordance with section 119.0701, Florida Statutes, Construction Manager agrees that documents, transactions, writings, papers, letters, tapes, photographs, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to this Agreement or in connection with any funds provided by the Owner pursuant to this Agreement may be considered public records pursuant to Chapter 119, Florida Statutes. Construction Manager agrees to keep and maintain any and all public records that ordinarily and necessarily would be required by the Owner in order to perform the services required by this Agreement. Construction Manager also agrees to provide the public with access to public records on the same terms and conditions that the Owner would provide the records and at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law. Construction Manager shall also ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. In addition, Construction Manager shall meet all requirements for retaining public records and transfer, at no cost, to the Owner all public records in possession of the Construction Manager upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner in a format that is compatible with the information technology systems of the Owner. If Construction Manager does not comply with a public records request, the Owner shall have the right to enforce the provisions of this Paragraph. In the event that Construction Manager fails to comply with the provisions of this Paragraph, and the Owner is required to enforce the provisions of this Paragraph, or the Owner suffers a third party award of attorney's fees and/or damages for violating the provisions of Chapter 119, Florida Statutes due to Contractor's failure to comply with the provisions of this Paragraph, the Owner shall be entitled to collect from Construction Manager prevailing party attorney's fees and costs, and any damages incurred by the Owner, for enforcing this Paragraph against Contractor. And, if applicable, the Owner shall also be entitled to reimbursement of any and all attorney's fees and damages which the Owner was required to pay a third party because of Contractor's failure to comply with the provisions of this Paragraph. This Paragraph shall survive the termination of this Agreement.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are specifically excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.
- .8 Costs for services incurred during the Preconstruction Phase.
- .9 Data Processing, software, hardware or computer-related costs.
- .10 Penalties and fines imposed by a government entity to the extent caused by the negligence, fault or breach by Construction Manager, Subcontractor of any tier, or anyone who Construction Manager shall be legally responsible.
- .11 Liquidated Damages
- .12 Legal, consultant, or claims-related expenses except as specifically provided in Sections 6.6.8 or 6.6.11.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is

consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of six (6) years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218 Et Seq.

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

§ 7.1.3 Payment by the Owner to the Construction Manager shall be made in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218 Et Seq., and shall be made by wire transfer to the Construction Manager's bank account. The Construction Manager shall provide to the Owner the appropriate bank routing and account information necessary to accomplish wire transfers.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 NOT USED.
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 Payments to Subcontractors shall be subject to retainage of ten percent (10%). Upon fifty percent (50%) completion of a Subcontractor's work, no further retainage will be withheld provided the Subcontractor is performing satisfactorily in the Owner's and Construction Manager's opinions. The Construction Manager's fee and General Conditions costs shall not be subject to retainage.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218 Et Seq.. when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the

written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- ☒ Litigation in a court of Flagler County
- ☐ Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007. Notwithstanding anything herein to the contrary, the Owner shall maintain the right to terminate for convenience as described in Section 14.1.1 of AIA Document A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the

amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

§ 11.5.1 It is expressly understood that the Owner shall be directly retaining the services of an Architect/Engineer.

§ 11.5.2 Notwithstanding anything contained herein, it is expressly understood that the Construction Manager's Project Control Systems, including without limitation - estimating, scheduling, purchasing, cost reporting and project engineering systems, and all modifications, additions, or alterations thereto, are and shall remain the sole property of the Construction Manager.

§ 11.5.3. NOT USED

§ 11.5.4 Notwithstanding the event of any claim, or other matter in question arising out of or relating to this Agreement or the breach thereof, the Construction Manager shall carry on the Work and the Owner shall continue to make payments in accordance with this Agreement.,

§ 11.5.5 NOT USED

§ 11.5.6 Environmental Limitation of Liability: The Construction Manager shall not be liable for environmental matters on, under or about the premises which constitute the Project, including without limitation, those relating to fines, orders, injunctions, penalties, damages, contribution, cost recovery compensation, losses or injuries resulting from the release or threatened release of hazardous materials, special wastes or other contaminants into the environment, the development or growth of mold within or on any structures, air quality levels, and to the generation, use, storage, transportation or illegal disposal of solid wastes, hazardous materials, special wastes or

other contaminants, unless such environmental claims are the result of the negligence of the Construction Manager or its failure to comply with the requirements of the Contract Documents. This disclaimer of liability shall apply to all such claims against the Construction Manager, whether direct or indirect, including without limitation, third party claims for which the Owner is seeking indemnification from the Construction Manager.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified.
- .2 AIA Document A201–2007, General Conditions of the Contract for

(Paragraphs deleted)

Construction, as modified.

This Agreement is entered into as of the day and year first written above.

DocuSigned by:

Jim Landon

28EDD2ABE6A8496...

Jim Landon, City Manager

(Printed name and title)

By:  President

CONSTRUCTION MANAGER (Signature)

Joe Burns, President

(Printed name and title)

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Holland Park Phase 2 Improvements
18 Florida Park Dr N, Palm Coast, FL 32164

THE OWNER:

(Name, legal status and address)

City of Palm Coast
160 Cypress Point Parkway, Ste. B-106
Palm Coast, FL 32164

THE ARCHITECT:

(Name, legal status and address)

Joseph Pozzuoli Architect
Joseph D. Pozzuoli, Principal
314 Moody Boulevard
Flagler Beach, FL 32136

S&ME

Jay Hood, Director of Landscape Architecture
1615 Edgewater Drive
Orlando, FL 32804

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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ARTICLE 1 GENERAL PROVISIONS**§ 1.1 BASIC DEFINITIONS****§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Construction Manager, (hereinafter the Contractor) (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction Management (hereinafter the Construction). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect and Contractor shall each, however, be entitled to performance and enforcement of obligations under the other's Contract intended to facilitate performance of their respective duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 INITIAL THIRD PARTY BENEFICIARY

Nothing contained in the Contract Documents shall create a contractual relationship between the Owner and any third party; however, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts for design or engineering services, all subcontracts, purchase orders as well as all agreements between the Contractor and third parties. The Contractor shall incorporate the obligations of this Contract into its respective subcontracts, supply agreements and purchase orders.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 The term "Provide", as used in the Contract Documents, includes furnishing all labor, supervision, tools, materials, supplies, equipment, shop drawings, product data and samples, together with all services, accessories and costs associated with performance of the work, for production of an item or system usable in the completed project.

§ 1.2.5 Where conflict or discrepancies exists within or between the Contract Documents or between the Contract Documents and applicable industry standards or applicable codes, ordinances, or other legal requirements, the more stringent requirements shall apply; otherwise, the following order of precedence shall be used:

- .1 The Agreement, GMP Amendment and Change Orders.
- .2 These General Conditions.
- .3 Addenda, with those of later date having precedence over those of earlier date.
- .4 Supplementary Conditions, if any.
- .5 Specifications.
- .6 Drawings.

§ 1.2.6 Dimensions indicated on any Drawings are required dimensions, regardless of measurement per given scale. The Contractor shall verify at the Site necessary levels, measurements, etc., for proper and complete fabrication, assembly and installation of Work. Where dimensions are not indicated, and exact location is not apparent, the Contractor shall notify the Owner and Architect. Omissions of details, figures or notes on one drawing, where another drawing correctly sets forth such information, shall not be cause for additional charges or claims.

§ 1.2.7 The better quality or greater quantity of work or materials shall be estimated upon and, unless otherwise ordered by the Architect in writing, shall be performed or furnished. Explanatory notes on Drawings take precedence over Specifications. Figures given on Drawings take precedence over scaled measurements, and large scale details take precedence over small Drawings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

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

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

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

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Failure of the Owner's Representative, in any one or more instances, to insist on strict performance of any of the terms of the Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment for the future insistence of any such terms or options.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after execution of the Agreement receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to the commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the contract.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, soil reports and subsurface investigations, and a legal description of the site. Owner shall also secure and provide all necessary easements and access as to allow all work to be completed. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Utility locations provided by the Owner are based only upon the best information available to the Owner and Contractor shall field verify utility locations before and during construction; however, any inconsistencies in the location of the Utilities shall remain a basis for an equitable adjustment in the Contractor's time and sum, if applicable.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services and, with the exception of utility locations and subject to section 2.2.3, the Contractor shall be entitled to rely upon the accuracy and completeness thereof.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. Owner shall incur no liability for delays occasioned by any stop-Work order issued in accordance with this Paragraph.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor may be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor, if the Architect or other persons entities delay or otherwise delay or prevent Contractor fulfilling its work, or otherwise increase the time and cost to perform said work..

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents and has notified the Architect of and requested clarification of any known discrepancies discovered during the building or proposal period. Contractor not liable for unforeseen conditions or required to perform any test without agreed upon compensation through the appropriate change request.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor

shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. The Contractor will generally review and compare the Contract Documents among themselves and further compare the Contract Documents with any other information furnished by the Owner pursuant to Section 3.2 before commencing work at the site and at frequent intervals during its progress.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. Contractor will generally review site conditions and other information known to the Contractor with the Contract Documents, before ordering any material or performing work

at the site; however, the Contractor shall be entitled to rely upon the accuracy and completeness of the Contract Documents, plans and specifications.

§ 3.2.5 The Contractor is not responsible for the sufficiency of the Contract Documents for their intended purpose. The Contractor will make inspections during the progress of the work to confirm that work previously performed by the Contractor is in compliance with the Contract Documents and applicable laws and regulations bearing on the performance of the work and Referenced Standards set forth in the plans and specifications, and that observable portions of the work previously performed by others are in proper condition to receive subsequent work.

§3.2.6 If the Contractor knows that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by Authorities Having Jurisdiction, or the Owner or its designees acting in the capacity of Authorities Having Jurisdiction, or Referenced Standards set forth in the plans and specifications, the Contractor must promptly notify the Owner and Architect of the non-compliance as provided in Section 3.2.7 and request direction before proceeding with the affected Work.

§3.2.7 The Contractor must promptly notify the Owner and Architect in writing of any known errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and

descriptions, and the Owner and the Architect must timely provide the Contractor in writing any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any known variances discovered from its review of the Site and physical data and Site conditions observed.

§3.2.8 If the Contractor performs any Work involving any known error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor discovers during the review required in Sections 3.2.1 through 3.2.5, without prompt written notice to the Owner and the Architect, the Contractor does so at his own risk and expense, but only to the extent of repair costs, which could have been avoided by timely notice.

§3.2.9 If the Contractor claims that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 through 3.2.8, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 through 3.2.8, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had timely performed such obligations. The Contractor shall not be liable to the

Owner or Architect for any damages, costs, or expenses resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, unless the Contractor knows of such error, omission, inconsistency or issue and proceeds with the work in the affected areas without notice to the Owner or Architect.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the skill and attention as Contractor's performing the same services on projects of the same size, complexity and general location as this Project, and in accordance with all local and Florida licensing requirements and Florida Building Code. Consistent with industry standards, the Contractor shall have the right to rely upon the accuracy and completeness of the Contract Documents, and that the Plans and Specifications comply with the applicable Building Codes, requirements and laws. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

§ 3.4.4 OWNER DIRECT PURCHASE

§ 3.4.4.1 The Contractor is not a tax expert, and the Owner represents and warrants to the Contractor that the Owner is tax exempt and may wish to exercise its right to purchase directly various construction materials, supplies and equipment that may be part of this Contract. The Owner will, via its purchase orders, purchase that material and the Contractor shall assist the Owner in the preparation of purchase orders. The Owner may direct the Contractor to prepare the purchase order on the Owner's form and make ready for verification and execution by the Owner. The materials shall be purchased from the vendors / suppliers originally selected by the Contractor, for the price originally negotiated by the Contractor. The Contractor shall prepare a complete list of materials, supplies and equipment, including the cost of each item, for the project and the Owner will advise Contractor in writing which items from the list the Owner wishes to purchase directly.

§ 3.4.4.2 At a time deemed acceptable to the Owner, the Contract amount shall be reduced by the net, undiscounted

amount of the purchase order, plus all sales taxes and surtax as levied. Issuance of the purchase orders by the Owner does not change any of the Contractor's responsibilities regarding material purchases, or installations, with the exception of the payments for the materials purchased. The Contractor remains responsible for coordination, correct quantities ordered, submittals, protection, storage, scheduling, shipping, security, expedition, receiving and unloading, certifying the accuracy of shipping tickets and invoices, installation, cleaning, all applicable warranties and that all materials purchased meet the requirements of the Contract Documents. The Contractor shall certify all invoices as accurate and acceptable and forward to the Owner the certified invoices for payment by the Owner.

§ 3.4.4.3 In the event that materials, supplies or equipment purchased under this option are defective or rejected for any reason whatsoever, and it becomes necessary in the opinion of the Contractor to initiate legal action against the responsible party, the Owner agrees to assign and subordinate to the Contractor any claims the Owner has against the responsible party resulting from the purchase order and to execute any legal documents necessary to accomplish the assignment, subordination or subrogation of such claims, and to cooperate with the Contractor in such legal action.

§ 3.4.4.4 The Contractor agrees to execute a Contractor's Direct Material Purchase Affidavit and to submit the affidavit to the Owner along with the above-described list of materials, supplies, and equipment, as agreed to between the Owner and Contractor. Tax savings shall be returned to the Owner via change order.

§ 3.4.4.5 In the avoidance of doubt, all tax saving from Owner direct purchases shall be to the benefit of the Owner, and under no circumstances shall such tax saving from Owner direct purchases be subject to 'shared saving' provision under this Agreement.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from construction defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Except as a result of design issues, work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted at the time the GMP is established, , whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

§ 3.7.1.1 Certain permits, regulations and fees may apply to construction work within the scope of the Contractor's Work included or involved in this Project when such work takes place beyond the limits of the Project Site. This may include but not be limited to hauling and disposal of materials and debris resulting from demolition. The Contractor shall pay the cost of any and all fees required by such offsite work. The Contractor and Owner may clarify, designate or change in the GMP Amendment to this Agreement who will pay for permits, regulation, fees or other Costs provided such clarification, designation or change is set forth in the GMP Amendment and the GMP Amendment shall govern.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15. No adjustment in Contract Sum or Contract Time shall be allowed pursuant to this Article to the extent the concealed or unknown condition should have been reasonably discovered by Contractor during Pre-proposal site inspections, review, or preconstruction services.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to the proposed

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superintendent or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 If the Contractor submits a schedule indicating an intention to achieve completion of the Work prior to contractually required dates, including milestones, it is understood and agreed that such schedule is for the Contractor's sole use and benefit, and no liability of the Owner to the Contractor will be applicable for any failure of

the Contractor to so complete prior to such contractually required dates, whether or not Owner approved such schedule. At all times the Contractor shall have control of the project schedule logic, sequence and methods, and Contractor may alter such schedule, logic, sequence and method as the Contractor may choose to timely complete the Project. Neither the Owner nor anyone other than the Contractor shall, directly or indirectly, control or change the Contractor's logic, sequence or method for scheduling the activities and work to complete the Project.

§ 3.10.5 At the Owner's option the Contractor shall provide a schedule utilizing critical path techniques to measure the progress of the Work. Such schedules shall be subject to Owner's and Architect's written approval.

§ 3.10.6 Float or slack is for the exclusive use or benefit of either the Owner or the Contractor, except to the extent the schedule indicating an intention to achieve completion of the Work prior to contractually required dates. Extensions of time for performance will be granted only to the extent that the equitable time adjustments for the activity or activities affected exceed the total float along the activity chain involved at the time the change was ordered or the delay occurred. Notwithstanding the above, the Contractor shall only be entitled to an extension of time for an excusable delay to the critical path of the Work that delays completion of the Project beyond the completion date stated in the Agreement unless otherwise provided in the Contract Documents.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. As-Built Drawings shall be updated monthly and shall provide as much reasonable accuracy as consistent with industry standards, and submission of

completed As-Built Drawings to Owner shall be a condition precedent to Final Payment. Completed As-Built Drawings shall be submitted in digital form.

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§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them for the limited purpose of, (2) determining and verifying materials, field measurements and field construction criteria related thereto, or will do so and (3) checking and coordinating the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof, except for error and omissions which are within the Architect's design responsibilities.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings

and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.1 The Contractor shall be responsible for the permitting, erection, maintaining and removal of all construction signage. The Contractor must submit all sign copy for approval prior to erecting or displaying same.

§ 3.13.2 The Contractor and Owner shall meet promptly after execution of the Agreement to determine reasonable requirements for ingress and egress from the site. Reasonable locations for staging, parking and a single construction

entrance shall be designated by Contractor, subject to the Owner's approval.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor by deductive Change Order.

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 For one hundred dollars (\$100.00), which is included in the contract price, the other good and valuable considerations, receipt of which is hereby acknowledged by the Contractor as consideration for the indemnity herein, To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 The Owner shall cause any other contractor who may have a contract with the Owner to perform construction or installation Work in the areas where Work will be performed under the Owner/Contractor Agreement, to agree to indemnify the Owner and Contractor and hold them harmless from all claims for bodily injury and property damage that may arise from that contractor's operations. Such provisions shall be in a form satisfactory to the Contractor

§ 3.18.4 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

§ 3.18.5 Notwithstanding any other provision of this agreement, nothing contained in this agreement shall be construed as a waiver of Owner's right to sovereign immunity under Section 768.28, Florida Statutes, or the limitations of liability set forth therein. The Parties shall not be liable to the other for punitive damages

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specified by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and

assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 or Termination for Convenience by Owner pursuant to Paragraph 14.4 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the Contractor, CDI, other insurance, or any surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under any insurance policy or the subcontract.

§ 5.4.2 If and upon the Owner exercising its right to accept an assignment of the Subcontract pursuant to the above provision, the Owner thereby accepts and assumes all the obligations, liabilities and duties of the Contractor with regard to the assigned Subcontract. Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

Subcontracts between Contractor and its Subcontractors shall provide for the assignment of those subcontracts from

Contractor to Owner at election of Owner upon termination of Contractor.

§ 5.4.3 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be adjusted for increases in direct cost resulting from the suspension beyond the 30 days

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate Contractors, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction. All such costs shall be paid by Change Order, as applicable.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. Agreement on and execution of any Change Order shall constitute a final settlement and a full accord and satisfaction of all matters relating to the

Change and to the impact of the Change on unchanged Work, including all direct and indirect costs of whatever nature, and all adjustments to the Contract Schedule unless expressly reserved in the Change Order.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 In determining adjustments to the Contract Sum, Section 7.3.3 shall apply.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on the total sum of the following :

- .1 The Cost of the Work as defined in Article 6 of the Owner/Contractor Agreement for the Change in the Work;
- .2 a General Conditions factor of ten percent (10%) for Change Orders which do not impact the Substantial Completion Date. For Change Orders which do impact the Substantial Completion Date, the General Conditions shall be subject to an equitable adjustment, and;
- .3 the Contractor's Fee as described in Subparagraph 5.1.2 of the Owner/Contractor Agreement

(Paragraph Deleted)

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

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§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be

furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.2.1 Notwithstanding Subparagraph 8.3.1, if the Work is delayed for any reason set forth in Section 8.3.1, including further but not limited to weather delays, and such delays in the total cumulative impact is less than twenty

(20) days regardless of the cause (except delays to the extent caused by the Contractor or its Subcontractors of any tier), then Contractor shall be entitled to an extension of time of Contract Time but not an adjustment in the Contract

Sum or GMP. In the event the Work is delayed for any reason set forth in Section 8.3.1, including further but not limited to weather delays, and such delays in the total cumulative impact is for twenty (20) days or longer, regardless of the cause (except delays to the extent caused by the Contractor or its Subcontractors of any tier), then Contractor shall be entitled to an extension of time of Contract Time plus an equitable adjustment in Contract Sum or GMP. In the GMP Amendment, the Parties may establish an agreed amount per day as the equitable adjustment Cost per day related to the item of Contractor's General Conditions. In the event Contractor is entitled to an equitable

adjustment in Contract Sum under this Agreement, then the Contractor's General Condition Costs per day as established in the GMP Amendment shall control and govern as the Contractor's entitlement for General Condition Costs.

§ 8.3.3 This Section 8.3 does not preclude recovery of direct damages for delay by either party under other provisions of the Contract Documents except only the first twenty (20) days caused only by the Owner; otherwise

delays shall be subject to compensation as set forth pursuant to the Contract Documents. In the event Contractor accelerates it work for any reason whatsoever, Owner shall pay no overtime inefficiencies to Contractor for such

acceleration and Contractor hereby expressly waives its right to recover such overtime inefficiencies which the Contractor elects to implement due to Contractor delays.

§ 8.3.4 If Contractors delays cause the Substantial Completion of the Project to not be timely achieved pursuant to the Agreement and subject to all adjustments or extensions to Contract Time, then Owner will suffer certain damages which the parties recognize are difficult and costly to establish and quantify. Therefore, the Parties agree that to the extent the Contractor, its Subcontractors of any tier or those for whom the Contractor is legally liable working under Contractors scope of Work, actually cause a delay to timely achieving the Substantial Completion of the Project, then for each day of such Contractor caused delay, the Contractor shall pay the Owner a Liquidated Damage. The Parties shall establish such a Liquidated Damage Amount per day in the GMP Amendment and the Parties agree that such Liquidated Damage Amount is reasonably related to unknown actual damages and is not a penalty.

§ 8.3.5 Contractors written claims for extension of Contract Time shall be accompanied by detailed dates, correspondence, notices and any other data which provides proof of the events which are the basis for the claim, including a network analysis justifying the time extension. Said network analysis shall specifically detail the extension of the critical path of the Project caused by the events, which underlie the time extension request

ARTICLE 9 PAYMENTS AND COMPLETION**§ 9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. Wherever the term "Contract Sum" appears throughout the Contract Documents it shall be deemed to mean "Guaranteed Maximum Price".

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents and in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218. Et, Seq., and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, , or if the Owner does not pay the Contractor in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218. Et Seq.,

then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218. Et Seq. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the

Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Payment by Owner shall be made in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218. Et Seq.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. As a condition precedent to Final Payment, and as part of the Application, Contractor shall deliver to the Owner all warranties, guarantees and other close out documents, including As-Builts, as required under the Contract Documents.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted in accordance with Florida's Prompt Payment Act, Florida Statutes Section 218. Et Seq.. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibilities for the safety of persons and property and for compliance with all Federal, State and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity subject to and without waiving the limits of liability set forth in Section 768.28, Florida Statutes.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS**§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified below or required by law, as applicable. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

a. Commercial General Liability:

- \$1,000,000 General Aggregate Limit (other than Products-Completed Operations)
- \$1,000,000 Products-Completed Operations Aggregate Limit
- \$1,000,000 Personal and Advertising Liability
- \$1,000,000 Each Occurrence Limit
- \$1,000,000 Fire Legal Liability
- \$ 5,000 Medical Expense Limit (each person)
- \$1,000,000 Employee Benefit Liability

b. Business Automobile Liability

- \$1,000,000 Bodily Injury and Property Damage Combined Single Limit

c. Excess Umbrella Liability

- \$5,000,000 Per Occurrence
- \$5,000,000 Annual Aggregate

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Failure of the Contractor to obtain and maintain required insurance shall be grounds for termination of the Contract by the Owner.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in

part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for maintaining the Owner's existing liability insurance for risks not associated with the Project.

§11.2.2 If Owner hires separate contractors to perform work for, or in or around, the Project, it shall include in its contracts with each separate contractor the following provisions: Contractor and its officers, directors, partners, members, employees and agents shall be (i) named as an additional insureds on a primary, non-contributory basis to any commercial general liability, pollution liability and excess liability insurance policies and (ii) provided a waiver of subrogation on all workers compensation and professional liability insurance policies.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner;

this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, 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 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.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 Prior to beginning Work, the Contractor shall furnish and pay for a Performance and Payment Bond on the Project in the amount of 100% of the Contract Price. The liability under said Bond shall be coextensive with the Contractor for all damages arising out of Contractor's breach of this agreement or failure to perform, including, but not limited to, delay damages, liquidated damages (if any), completion of punch lists and the Contractor's responsibilities under subparagraph 12.2.2.1 herein. "Conditional" Payment Bonds under Florida Statutes, Section 713.245, shall not be acceptable. Proper Power of Attorney shall accompany said bonds. Bonds shall be on forms provided by and approved by Owner.

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

§ 11.4.3: Bonds shall be secured through sources acceptable to the Owner. To be acceptable to the Owner as Surety for Performance and Payments Bonds, a Surety Company shall comply with the following provisions:

- .1 The Surety Company must be authorized to do business in the State of Florida.
- .2 The Surety Company shall have been in business and have a record of successful continuous operations for at least five years.
- .3 The Surety Company shall have at least A.M. Best Company Policyholder's Rating of "A" and "Financial Size Category" of Class XI or an equivalent rating from the Insurance Commissioner if not rated by Best's.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents,

any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work nor to Owner's right to make claim with respect to latent defects.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable and agreed upon by Owner, Architect and Construction Manager. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or

certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. In addition, the Owner and Contractor designate the following representatives to receive any Notice required under the Contract Documents, to wit:

For the Owner:
Jim Landon, City Manager
160 Lake Avenue
Palm Coast, FL
32164

For the Contractor:
Chris Trowell
4639 NW 53rd Avenue
Gainesville, Florida 32653

§ 13.3.1 Written notice requirements of this Contract shall be strictly construed and such requirements are a condition precedent to pursuing any rights or remedies hereunder. Contractor and Owner expressly waives its rights to claim any waiver by Owner or Contractor of such notice requirements based upon Owner or Contractor having actual knowledge, implied, verbal or constructive notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.2.1 The Owner reserves the right to perform additional tests of materials, work and equipment provided under this Contract and will pay all costs involved in such additional tests. In the event the test results establish a construction defect in violation of the Contract Documents, the Contractor agrees to correct such construction defects and identified deficiencies, arrange for, and pay the cost of all re-testing and repeat the process until re-test reports indicate all deficiencies have been corrected. In all cases, re-tests shall be performed by the same testing agency who performed the initial test.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

Any statutes of limitations shall commence to run, and all causes of action shall be deemed to have accrued, in accordance with applicable Florida law.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- 1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- 2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- 3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- 4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 60 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon thirty (30) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, damages, demobilization costs, and costs resulting from compliance with the Contract Documents, but will not be paid for profit on unexecuted work and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional

days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of material breach of a material provision of the Contract Documents.
- .5 files for bankruptcy (voluntary or involuntary)

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work properly executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work performed to date, and costs resulting from compliance with the Contract Documents, but will not be paid for anticipated profits on unperformed Work. The Parties agree that in the event of termination by the Owner for convenience, in addition to payment for Work executed, the Construction Manager shall also be compensated an amount equal to forty-five (45) days of general conditions plus 10 % for overhead and profit.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either party must be made within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice to the Architect and the other party. Claims must specifically detail facts and issues substantiating the Claim, including all costs and expenses incurred. Claims must be made in writing and timely filed in accordance with the specific requirements of the Contract Documents and under no circumstances whatsoever be based upon actual or verbal notice or lack of prejudice to the other party. An additional Claim after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.4.1 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, then such Claim shall be filed in accordance with this Section 15.1.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

Notwithstanding the foregoing, the Contractor shall be entitled to an equitable adjustment in its fee and general conditions in the event of delays beyond its control as set forth in Subparagraphs 8.3.1 and 8.3.2.1.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 All controversies, claims, or disputes arising out of this Agreement shall initially be subject to a non-binding mediation as condition precedent to the commencement of litigation in the Circuit Court of Flagler County, Florida.

The mediator shall be selected by mutual agreement of the parties, and such mediation shall be held at a mutually agreeable time and place in Flagler County, Florida. A request for mediation shall be made in writing, delivered to the other party to the Contract within

a reasonable time after the claim, dispute or other matter in question has arisen or as provided in subparagraph 15.3.1, but in no event after the expiration of the applicable statute of limitations.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(Paragraph Deleted)

(Paragraphs Deleted)

EXHIBIT “C”

Westfield Insurance Company

Westfield Group® 1 Park Circle, PO Box 5001, Westfield Center, Ohio 44251-5001

Bond No. 006808R

Conforms to Document A312™ - 2010

Payment Bond

CONTRACTOR:

(Name, legal status and address)

BBi Construction Management, Inc

4639 N.W. 53rd Avenue

Gainesville, FL 32653

OWNER:

(Name, legal status and address)

City of Palm Coast

160 Lake Avenue

Palm Coast, FL 32164

SURETY:

(Name, legal status and principal place of business)

Westfield Insurance Company

1 Park Circle, PO Box 5001

Westfield Center, OH 44251-5001

CONSTRUCTION CONTRACT

Date: 4/2/2019

Amount: Five Million, Six Hundred Thirteen Thousand, Three Hundred Thirty-Seven and 00/100 Dollars (\$5,613,337.00)

Description:

(Name and location) Holland Park Phase 2 improvements, 18 Florida Park Drive N, Palm Coast, FL 32164

BOND

Date: 4/5/2019

(Not earlier than Construction Contract Date)

Amount: Five Million, Six Hundred Thirteen Thousand, Three Hundred Thirty-Seven and 00/100 Dollars (\$5,613,337.00)

Modifications to this Bond:

☒ None

☐ See Section 18

CONTRACTOR AS PRINCIPAL

Company: BBI Construction Management, Inc

(Corporate Seal)

SURETY

Company: Westfield Insurance Company

(Corporate Seal)

Signature: 

Name Joe Burns

and Title: President

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY – Name, address and telephone)

AGENT or BROKER:

Hub International-Florida

2811 N.W. 41st Street

Gainesville, FL 32606

Signature: 

Name Christy Allison

and Title: Attorney-in-fact

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

- 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
- 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
- 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.
- 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.
- 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants, who do not have a direct contract with the Contractor,
 - .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - .2 have sent a Claim to the Surety (at the address described in Section 13).
 - 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).
- 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.
- 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
- 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
- 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the

Owner's priority to use the funds for the completion of the work.

10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16 Definitions

16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

- 16.3 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.
- 17** If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
- 18** Modifications to this bond are as follows:

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

CONTRACTOR AS PRINCIPAL

Company: BBI Construction Management, Inc
(Corporate Seal)
Signature: 
Name and Title: Joe Burns/President
Address: 4639 N.W. 53rd Avenue
Gainesville, FL 32653

SURETY

Company: Westfield Insurance Company
(Corporate Seal)
Signature: 
Name and Title: Christy Allison/Attorney-in-Fact
Address: 2811 N.W. 41st Street
Gainesville, FL 32606

Westfield Insurance Company

Westfield Group® 1 Park Circle, PO Box 5001, Westfield Center, Ohio 44251-5001

Bond No. 006808R

Conforms to Document A312™ - 2010

Performance Bond

CONTRACTOR:

(Name, legal status and address)

BBI Construction Management, Inc

4639 N.W. 53rd Avenue

Gainesville, FL 32653

OWNER:

(Name, legal status and address)

City of Palm Coast

160 Lake Avenue

Palm Coast, FL 32164

CONSTRUCTION CONTRACT

Date: 4/2/2019

Amount: Five Million, Six Hundred Thirteen Thousand, Three Hundred Thirty-Seven and 00/100 Dollars (\$5,613,337.00)

Description:

(Name and location)

Holland Park Phase 2 improvements, 18 Florida Park Drive N, Palm Coast, FL 32164

SURETY:

(Name, legal status and principal place of business)

Westfield Insurance Company

1 Park Circle, PO Box 5001

Westfield Center, OH 44251-5001

BOND

Date: 4/5/2019

(Not earlier than Construction Contract Date)

Amount: Five Million, Six Hundred Thirteen Thousand, Three Hundred Thirty-Seven and 00/100 Dollars (\$5,613,337.00)

Modifications to this Bond:

☒ None

☐ See Section 16

CONTRACTOR AS PRINCIPAL


Company: BBI Construction Management, Inc

(Corporate Seal)

SURETY

Company: Westfield Insurance Company

(Corporate Seal)

Signature: 

Name Joe Burns

and Title: President

(Any additional signatures appear on the last page of this Performance Bond.)


(FOR INFORMATION ONLY – Name, address and telephone)

AGENT or BROKER:

Hub International-Florida

2811 N.W. 41st Street

Gainesville, FL 32606

Signature: 

Name Christy Allison

and Title:

Attorney-in-fact

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

- 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
- 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.
- 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after
 - .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 - .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
- 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
- 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
 - 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
 - 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
 - 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 - .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
 - .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
- 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions confirming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14 Definitions

14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16 Modifications to this bond are as follows:

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

CONTRACTOR AS PRINCIPAL

Company: BBI Construction Management, Inc (Corporate Seal)

Signature: _____

Name and Title: Joe Burns/President

Address

4639 N.W. 53rd Avenue
Gainesville, FL 32653

SURETY

Company: Westfield Insurance Company (Corporate Seal)

Signature: Christy Allison _____

Name and Title: Christy Allison/Attorney-in-Fact

Address

2811 N.W. 41st Street
Gainesville, FL 32606

POWER NO. 0994052 00

General
Power
of Attorney**Westfield Insurance Co.**
Westfield National Insurance Co.
Ohio Farmers Insurance Co.
Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint
RICHARD E. SCARBOROUGH, CHRISTY ALLISON, TONYA JOHNSON, JOINTLY OR SEVERALLY

of GAINESVILLE and State of FL its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship.

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact. may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be It Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their National Surety Leader and Senior Executive and their corporate seals to be hereto affixed this 06th day of NOVEMBER A.D., 2014.

Corporate
Seals
Affixed

WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

By: *Dennis P. Baus*

Dennis P. Baus, National Surety Leader and Senior Executive

State of Ohio
County of Medina

ss.:

On this 06th day of NOVEMBER A.D., 2014, before me personally came **Dennis P. Baus** to me known, who, being by me duly sworn, did depose and say, that he resides in **Wooster, Ohio**; that he is **National Surety Leader and Senior Executive** of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial
Seal
Affixed

David A. Kotnik

David A. Kotnik, Attorney at Law, Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

State of Ohio
County of Medina

ss.:

I, **Frank A. Carrino**, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this 5th day of April, A.D., 2019.



Frank A. Carrino Secretary
Frank A. Carrino, Secretary

EXHIBIT “D”

BILLO

Page 1 of 1

Purchase Order #	20201556
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VENDOR

SHIP TO

Delivery Reference	
Department/Location	
STRWT-ENGINEERING OPERATIONS	
Unit Price	Net Price
ing Sheets And Bills Of	
CE PO NUMBER ON	
DER CALL	
\$99,130.000	\$99,130.00

VENDOR COPY

\$99,130.00

Terms and Conditions

By accepting this Purchase Order (PO) Vendor accepts all of the Terms and Conditions included herein. If any Vendor terms and conditions in any document conflict with the terms and conditions herein, this PO prevails. In the event that the Terms and Conditions of this PO are inconsistent with the terms and conditions of an underlying contract which is implemented, in whole or part, by this PO, then the terms and conditions of the underlying contract shall govern.

1. Delivery. Terms of shipping are F.O.B. Destination Freight Collect and Allowed. Title and risk of loss shall pass when items have been received, inspected and accepted by City. All associated shipping, insurance and other related costs shall be borne by Vendor. Extra charges for any purpose will not be allowed unless explicitly indicated on the PO. The City reserves the right to conduct any inspection or investigation to verify compliance of the goods and/or services with the requirements of this purchase and to reject any delivery not in compliance, and if the deficiency is not visible at the time of delivery, to take and/or require appropriate corrective action. Time is of the essence.

2. Firm Pricing/Invoices/Payment Terms. Prices stated on this PO are firm, all inclusive and consistent with applicable negotiations, bid(s) or quotations. This order is hereby cancelled if pricing is omitted. After each delivery the Vendor shall provide to City the "bill to address" an original, "proper invoice" (single copy) which includes: a) Vendor's name (dba), telephone number, mailing address; b) City's PO Number; c) Date of invoice; d) Shipping date; e) Delivery date; f) Payment terms; g) Description of goods/services; h) Quantity; i) Unit price; j) Extended price; k) Total. The City has the right to reconcile invoice with the PO and adjust payment accordingly to comply with the PO. Payment will be made only to the Vendor identified on the PO and only for received and accepted goods/services. The City shall have the right at any time to set-off any amounts due to the Vendor against any amounts owed to the City by the Vendor, and the City shall, in the case of Vendor default, retain the right to further adjust payments if in the best interests of the City. Payment of invoices will be in compliance with Chapter 218, Florida Statutes, the Purchasing Policies of the City, and the stipulations, terms and conditions of this PO. Any cash discount period will date from receipt of invoice, receipt of actual delivery, or date of invoice, whichever is later.

3. Warranty. Vendor warrants that all work or services shall be performed in a good and competent workmanlike manner and that any goods supplied are new, of good quality, and free from defects in title, workmanship, material, and in design, and are in full compliance with the specifications. The goods or services are covered by the most favorable commercial warranties given any customer for such goods and/or services, and the rights and remedies provided therein are in addition to and do not limit those available to the City by any other clause of this PO. A copy of this warranty and all applicable manufacturer's warranties shall be furnished with the delivery of the goods and/or services.

4. Indemnification/Sovereign Immunity. Vendor agrees to indemnify, hold harmless and defend the City: (1) from any loss, expense, claim or damage arising from any claim or action based on any acts or omissions of the Vendor, its employees, servants, agents or subcontractors; (2) with respect to any and all claims, suits, actions, and proceedings of actual or alleged infringements of any letter, Patent, Registered of Industrial Design, Trademark or Trade Name, Trade Secret, Copyright or other protected right in any country resulting from any sale, use or manufacture of any material delivered hereunder. The City reserves its rights to be represented in any such action by its own counsel at its own expense. The City expressly retains all rights, benefits and immunities of sovereign immunity and nothing herein shall be deemed to affect the rights, privileges, and immunities of the City as set forth in Section 768.28, Florida Statutes.

5. Insurance. Vendor shall maintain comprehensive general liability, workers compensation (or state-issued exemption) and auto insurance in the amounts acceptable to City with such companies other than those authorized by Section 440.57, Florida Statutes, that maintain a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best Company. The City reserves the right to be named as an Additional Insured. Upon request, Vendor shall furnish City with evidence of the required insurance. Noncompliance with this item shall place the Vendor in default and subject to disbarment from the City's Vendor List.

6. Termination. City may cancel this PO, any outstanding deliveries or reschedule shipping in whole or in part for convenience upon written notice to the Vendor sent at least fourteen (14) days prior to the delivery date specified. The City shall have no liability to the Vendor beyond payment of any balance owing for material purchased and delivered to and accepted by the City prior to the Vendor's receipt of the notice of termination. The City may terminate this PO in whole or in part at any time for default by written notice to the Vendor. In the event of a breach by Vendor, including a delay in delivery or performance hereunder, City reserves the right to purchase substitutions and to charge Vendor for any loss incurred. If this PO is terminated by the City for the Vendor's default, then Vendor will be liable for all incidental and consequential damages resulting from Vendor's breach, including all damages provided in the UCC. In the event Vendor is adjudged by a court to be in default, Vendor will pay to the City all costs and expenses incurred by the City in connection with the suit, including reasonable attorney's fees.

7. Assignment. Vendor shall not assign this PO, any rights under this PO or any monies due or to become due nor delegate or subcontract any obligations or work without the prior written consent of the City.

8. Independent Contractor. Vendor shall perform the obligations of this PO as an independent contractor and under no circumstances shall it be considered as agent or employee of the City.

9. Compliance with Law. Vendor agrees to comply with all Federal, State, and City laws, ordinances, regulations, and codes, including but not limited to nondiscrimination, immigration and ethics laws. Violation of this section is grounds for debarment.

10. Choice of Law/Jurisdiction/Venue. This PO shall be governed by and interpreted in accordance with the laws of the State of Florida. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue shall be of the Seventh Judicial Circuit in and for Flagler County, Florida, or the Middle District of Florida in Orlando, FL., if in federal court.

11. Modification. City may unilaterally change, at no additional cost, the quantity and receiving point within the City for items not yet shipped or performed. All other modifications must be mutually agreed upon in writing. City is not required to pay for defective items, back-orders, late deliveries, those quantities exceeding the PO, or items shipped at a higher price than stated on the PO.

12. Notices. All notices given by one party to the other under this PO shall be in writing and deemed to have been duly given when delivered to the receiving party's address set forth on this PO either by hand, overnight courier, or certified or registered mail, return receipt requested (postage prepaid) . For the City, it shall be addressed to the Contracts Coordinator, 160 Lake Avenue, Palm Coast, FL 32164.

13. No Waiver. The failure of the City to enforce any provision of this PO or exercise any right or privilege granted to the City shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

14. Taxes. City is exempt from the Florida Sales and Use Tax and will furnish the Vendor with proof of tax exemption upon request.

15. UCC. In addition to any rights or remedies contained in this PO, each party shall have rights, duties, and remedies available through the Uniform Commercial Code.

EXHIBIT “E”

GRAY ROBINSON
ATTORNEYS AT LAW



Trevor B. Arnold, Esq., B.C.S.

Chair, Construction

407-244-5692

TREVOR.ARNOLD@GRAY-ROBINSON.COM

SUITE 1400
301 EAST PINE STREET (32801)
POST OFFICE BOX 3068
ORLANDO, FL 32802-3068
TEL 407-843-8880
FAX 407-244-5690
gray-robinson.com

BOCA RATON
FORT LAUDERDALE
FORT MYERS
GAINESVILLE
JACKSONVILLE
KEY WEST
LAKELAND
MELBOURNE
MIAMI
NAPLES
ORLANDO
TALLAHASSEE
TAMPA
WEST PALM BEACH

April 12, 2022

VIA CERTIFIED MAIL

S&ME, Inc.
c/o Cogency Global Inc., Registered Agent
115 N. Calhoun St., Suite 4
Tallahassee, FL 32301

Keith C. Brown, Director
S&ME, Inc.
2724 Discovery Dr., Suite 120
Raleigh, NC 27616

Leonard E. Arnold, Jr, Principal
S&ME, Inc.
1615 Edgewater Drive, Suite 180
Orlando, Florida 32804

Re: **Notice of Claim Pursuant to Chapter 558, Florida Statutes**
Holland Park Phase 2 Improvements
18 Florida Park Drive North
Palm Coast, Florida 32164

To Whom It May Concern:

Our law firm represents the City of Palm Coast (the "City") with regard to the Holland Park Phase 2 Improvements Project. As you know, S&ME, Inc. ("SME") entered into an agreement with the City of Palm Coast ("Palm Coast") to provide landscape architectural and park design services for the installation of a new splash pad at James F. Holland Park (the "Project"). As a result of design and construction deficiencies, the splash pad has failed and is unable to operate as intended.

Accordingly, this correspondence serves as the City's Notice of Claim of Construction Defects (the "Notice of Claim"), pursuant to Section 558.004, *Florida Statutes*. On-site investigations revealed a number of issues affecting the Poured-in-Place ("PIP") surfacing of the splash pad, as well as the operation of the splash pad as a whole. These issues include but are not limited to:

- 1) Delamination and micro-foaming of the splash pad surfacing;
- 2) The two Aquatix jumping jets are not functioning properly;
- 3) The pumping and filtration system is underperforming due to a build-up of dry or gummy substance;

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Page 2

- 4) The blue/black PIP mixture in the toddler splash area is expected to fail as the black material is a recycle rubber product which does not hold up well in the splash pad environment;
- 5) The PIP surface is fading to white;
- 6) The buffings are retaining water and chemicals;
- 7) Due to water retainage in the buffings, the system will suck air at 29 minutes, 27 seconds without the addition of make-up water;
- 8) Due to water retainage in the buffings, the buffings shed water into the wet deck;
- 9) Deck sprays located in the buffings area are underperforming; and
- 10) Due to water retainage in the buffings, the drain is down anywhere from 6-12 hours.

The City's investigation regarding defects and damages is ongoing. The City reserves the right to supplement this correspondence as investigation continues.

Pursuant to Section 33(a) of the Parties' Contract, SME explicitly agreed to "**indemnify and hold harmless the City**, and its officers and employees, from liabilities, **damages**, losses, and **costs**, including but not limited to, reasonable attorney's fees, **to the extent caused by the negligence**, recklessness, or intentionally wrongful conduct **of [SME]** and other persons employed or utilized by [SME] **in the performance of the Contract.**" (emphasis added).

Within thirty (10) days of receiving this Notice of Claim, SME must provide a copy of this Notice of Claim to any and all contractors, subcontractors, suppliers, design professionals, and consultants whom SME reasonably believes may be responsible for the defects noted herein. Immediately thereafter, please provide our office with the identity of each subcontractor, supplier, design professional, and/or consultant that SME used for the Project, the scope of work for each individual or entity identified, and a copy of the relevant subcontract or agreement.

SME's Written Response

SME must provide the City with a written response to this Notice of Claim within forty five (45) days of receiving this Notice of Claim. Pursuant to Section 558.004, *Florida Statutes*, the written response must provide the following:

- a) A written offer to remedy the alleged construction defect at no cost to the claimant, a detailed description of the proposed repairs necessary to remedy the defect, and a timetable for the completion of such repairs;
- b) A written offer to compromise and settle the claim by monetary payment that will not obligate the person's insurer and a timetable for making payments;
- c) A written offer to compromise and settle the claim by a combination of repairs and monetary payment, that will not obligate the person's insurer, that includes a detailed description of the proposed repairs and a timetable for the completion of such repairs and making payments;
- d) A written statement that the person disputes the claim and will not remedy the defect or compromise and settle the claim; or

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Page 3

- e) A written statement that a monetary payment, including insurance proceeds, if any, will be determined by the person's insurer within thirty (30) days after notification to the insurer by means of serving the claim, which service shall occur at the same time the claimant is notified of this settlement option, which the claimant may accept or reject. A written statement under this paragraph may also include an offer under paragraph c) above, but such offer shall be contingent upon the claimant also accepting the determination of the insurer whether to make any monetary payment in addition thereto. If the insurer for the person served with the claim makes no response within the thirty (30) days following service, then the claimant shall be deemed to have met all conditions precedent to commencing an action.

Request for Production of Materials

Pursuant to Section 558.004(15), *Florida Statutes*, this Notice of Claim also serves as a request for you to produce all records related to your services at the Project, including but not limited to design plans, specifications, as built plans, subcontracts, and purchase orders. The City offers to pay the reasonable costs of reproduction for any of the foregoing materials, provided that SME contacts the undersigned counsel before incurring costs in excess of \$100.00. The discoverability and admissibility of any materials shared with this notice or in response to the above request shall be governed by Section 558.004(15), *Florida Statutes*. The City hereby reserves the right to supplement its request for documents relevant to the construction process as investigation continues.

Pursuant to Section 558.004, *Florida Statutes*, SME may contact the undersigned counsel to schedule a mutually convenient time, within thirty (30) days of this letter, to inspect the Project.

Request for Insurance Information

Pursuant to Section 627.4137, *Florida Statutes*, SME is also required to provide a copy of this letter to each of its liability insurers, who then must issue a statement within thirty (30) days, under oath, from a corporate officer or the insurer's claims manager or superintendent, setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

- a) The name of the insurer;
- b) The name of each insured;
- c) The limits of the liability coverage;
- d) A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement; and
- e) A copy of the policy.

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Page 4

Request to Preserve Documents

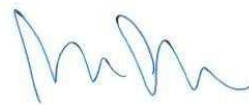
SME is hereby notified not to destroy, conceal, or alter any paper or electronic files, or other information generated by and/or stored on a computer system or storage media, in its possession, custody, or control, including the possession, custody, and control of affiliated companies that were involved in the Project in any manner. The laws and rules prohibiting the destruction of evidence apply to electronically stored information in the same manner that they apply to other evidence. Accordingly, SME must take every reasonable step to preserve documents and information until final resolution of this matter. SME has an obligation to discontinue all routine document and data destruction. SME should also save all documents and electronic data created after it receives this correspondence.

The City has incurred and will incur substantial damages from the defective design and construction, including but not limited to, investigation and destructive testing of the area, repair costs, loss of use, and loss of revenue. Your prompt attention to this matter is necessary, as the City must conduct remediation efforts as soon as possible in order to mitigate further damages.

As previously mentioned, we respectfully request SME to advise of its position with respect to the issues set forth herein within forty-five (45) days of receipt of this correspondence. Additionally, the City is willing to participate in mediation of this matter. The City requires prompt discussion regarding mediation details and requests SME to advise within ten (10) calendar days of receipt of this correspondence whether it intends to move forward with mediation efforts. The mediation is to occur within forty-five (45) days of receipt of this correspondence. This request for mediation satisfies condition precedents required of the City.

Please feel free to contact us to further discuss this matter.

Sincerely,

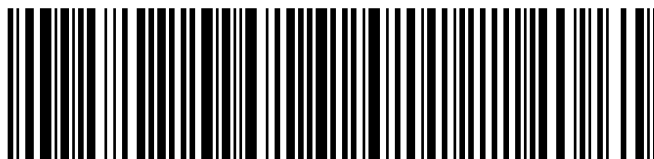
A handwritten signature in blue ink, appearing to read 'Trevor B. Arnold', with a stylized, cursive script.

Trevor B. Arnold, B.C.S.

TBA/NKB

USPS CERTIFIED MAIL

GrayRobinson P A
301 E Pine St Ste 1400
Orlando FL 32801-2798



9214 8901 8318 2900 0242 56

S&ME INC
C/O: COGENCY GLOBAL INC REGISTERED AGENT
STE 4
115 N CALHOUN ST
TALLAHASSEE FL 32301-1568

USPS CERTIFIED MAIL

GrayRobinson P A
301 E Pine St Ste 1400
Orlando FL 32801-2798

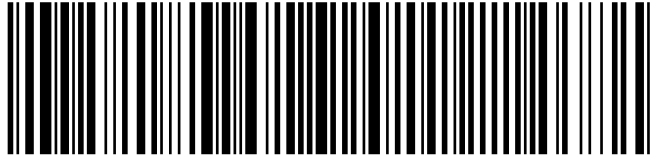


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KEITH C BROWN
S&ME INC
STE 120
2724 DISCOVERY DR
RALEIGH NC 27616-1940

USPS CERTIFIED MAIL

GrayRobinson P A
301 E Pine St Ste 1400
Orlando FL 32801-2798



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LEONARD E ARNOLD JR
S&ME INC
STE 180
1615 EDGEWATER DR
ORLANDO FL 32804-5851

GRAY ROBINSON
ATTORNEYS AT LAW



Trevor B. Arnold, Esq., B.C.S.

Chair, Construction

407-244-5692

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FAX 407-244-5690
gray-robinson.com

BOCA RATON
FORT LAUDERDALE
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KEY WEST
LAKELAND
MELBOURNE
MIAMI
NAPLES
ORLANDO
TALLAHASSEE
TAMPA
WEST PALM BEACH

April 12, 2022

VIA CERTIFIED MAIL

BBI Construction Management, Inc.
c/o Joe Burns, Registered Agent
4639 NW 53rd Avenue
Gainesville, FL 32653

Re: **Notice of Claim Pursuant to Chapter 558, Florida Statutes**

Holland Park Phase 2 Improvements
18 Florida Park Drive North
Palm Coast, Florida 32164

Dear Mr. Burns:

Our law firm represents the City of Palm Coast (the "City") with regard to the Holland Park Phase 2 Improvements Project. As you know, BBI Construction Management, Inc. ("BBI") entered into an agreement with the City for BBI to provide construction management services for improvements to James F. Holland Park, which included the installation of a new splash pad (the "Project"). As a result of design and construction deficiencies, the splash pad has failed and is unable to operate as intended.

Accordingly, this correspondence serves as the City's Notice of Claim of Construction Defects (the "Notice of Claim"), pursuant to Section 558.004, *Florida Statutes*. Pursuant to Section 3.1 of the Performance Bond issued to BBI by Westfield Insurance Company, this correspondence further serves to notify BBI that the City is considering declaring a contractor default. On-site investigations revealed a number of issues affecting the Poured-in-Place ("PIP") surfacing of the splash pad, as well as the operation of the splash pad as a whole. These issues include but are not limited to:

- 1) Delamination and micro-foaming of the splash pad surfacing;
- 2) The two Aquatix jumping jets are not functioning properly;
- 3) The pumping and filtration system is underperforming due to a build-up of dry or gummy substance;
- 4) The blue/black PIP mixture in the toddler splash area is expected to fail as the black material is a recycle rubber product which does not hold up well in the splash pad environment;
- 5) The PIP surface is fading to white;
- 6) The buffings are retaining water and chemicals;
- 7) Due to water retainage in the buffings, the system will suck air at 29 minutes, 27 seconds without the addition of make-up water;
- 8) Due to water retainage in the buffings, the buffings shed water into the wet deck;
- 9) Deck sprays located in the buffings area are underperforming; and
- 10) Due to water retainage in the buffings, the drain is down anywhere from 6-12 hours.

April 12, 2022
Page 2

The City's investigation regarding defects and damages is ongoing. The City reserves the right to supplement this correspondence as investigation continues.

Pursuant to Section 3.5 of the Parties' Contract, BBI warranted to the City that "materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. [BBI] further warrant[ed] that the Work will conform to the requirements of the Contract Documents and will be free from construction defects. . . ." Additionally, pursuant to BBI's correspondence, dated May 27, 2021, BBI warranted "all labor and materials for the . . . [P]roject . . . for a period of two years from the date of substantial completion for each area or building." As clearly outlined by the correspondence, the splash pad was deemed substantially complete on or about April 22, 2021.

Within thirty (10) days of receiving this Notice of Claim, BBI must provide a copy of this Notice of Claim to any and all contractors, subcontractors, suppliers, design professionals, and consultants whom BBI reasonably believes may be responsible for the defects noted herein. Immediately thereafter, please provide our office with the identity of each subcontractor, supplier, design professional, and/or consultant that BBI used for the Project, the scope of work for each individual or entity identified, and a copy of the relevant subcontract or agreement.

BBI's Written Response

BBI must provide the City with a written response to this Notice of Claim within forty five (45) days of receiving this Notice of Claim. Pursuant to Section 558.004, *Florida Statutes*, the written response must provide the following:

- a) A written offer to remedy the alleged construction defect at no cost to the claimant, a detailed description of the proposed repairs necessary to remedy the defect, and a timetable for the completion of such repairs;
- b) A written offer to compromise and settle the claim by monetary payment that will not obligate the person's insurer and a timetable for making payments;
- c) A written offer to compromise and settle the claim by a combination of repairs and monetary payment, that will not obligate the person's insurer, that includes a detailed description of the proposed repairs and a timetable for the completion of such repairs and making payments;
- d) A written statement that the person disputes the claim and will not remedy the defect or compromise and settle the claim; or
- e) A written statement that a monetary payment, including insurance proceeds, if any, will be determined by the person's insurer within thirty (30) days after notification to the insurer by means of serving the claim, which service shall occur at the same time the claimant is notified of this settlement option, which the claimant may accept or reject. A written statement under this paragraph may also include an offer under paragraph c) above, but such offer shall be contingent upon the claimant also

April 12, 2022
Page 3

accepting the determination of the insurer whether to make any monetary payment in addition thereto. If the insurer for the person served with the claim makes no response within the thirty (30) days following service, then the claimant shall be deemed to have met all conditions precedent to commencing an action.

Request for Production of Materials

Pursuant to Section 558.004(15), *Florida Statutes*, this Notice of Claim also serves as a request for you to produce all records related to your services at the Project, including but not limited to, design plans, specifications, as built plans, subcontracts, and purchase orders. The City offers to pay the reasonable costs of reproduction for any of the foregoing materials, provided that BBI contacts the undersigned counsel before incurring costs in excess of \$100.00. The discoverability and admissibility of any materials shared with this notice or in response to the above request shall be governed by Section 558.004(15), *Florida Statutes*. The City hereby reserves the right to supplement its request for documents relevant to the construction process as investigation continues.

Pursuant to Section 558.004, *Florida Statutes*, BBI may contact the undersigned counsel to schedule a mutually convenient time, within thirty (30) days of this letter, to inspect the Project.

Request for Insurance Information

Pursuant to Section 627.4137, *Florida Statutes*, BBI is also required to provide a copy of this letter to each of its liability insurers, who then must issue a statement within thirty (30) days, under oath, from a corporate officer or the insurer's claims manager or superintendent, setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

- a) The name of the insurer;
- b) The name of each insured;
- c) The limits of the liability coverage;
- d) A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement; and
- e) A copy of the policy.

Request to Preserve Documents

BBI is hereby notified not to destroy, conceal, or alter any paper or electronic files, or other information generated by and/or stored on a computer system or storage media, in its possession, custody, or control, including the possession, custody, and control of affiliated companies that were involved in the Project in any manner. The laws and rules prohibiting the destruction of

April 12, 2022
Page 4

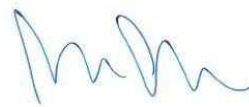
evidence apply to electronically stored information in the same manner that they apply to other evidence. Accordingly, BBI must take every reasonable step to preserve documents and information until final resolution of this matter. BBI has an obligation to discontinue all routine document and data destruction. BBI should also save all documents and electronic data created after it receives this correspondence.

The City has incurred and will incur substantial damages from the defective design and construction, including but not limited to, investigation and destructive testing of the area, repair costs, loss of use, and loss of revenue. Your prompt attention to this matter is necessary, as the City must conduct remediation efforts as soon as possible in order to mitigate further damages.

As previously mentioned, we respectfully request BBI to advise of its position with respect to the issues set forth herein within forty-five (45) days of receipt of this correspondence. Additionally, pursuant to Section 3.1 of the Performance Bond, the City requests a conference with BBI and Westfield, to be held within ten (10) business days of receipt of this correspondence, to discuss the issues herein. The City is willing to participate in mediation of this matter. The City requires prompt discussion regarding mediation details and requests BBI to advise within ten (10) calendar days of receipt of this correspondence whether it intends to move forward with mediation efforts. The mediation is to occur within forty-five (45) days of receipt of this correspondence. This request for mediation satisfies condition precedents required of the City.

Please contact our office as soon as possible to set up an amicable date and time for the requested conference.

Sincerely,

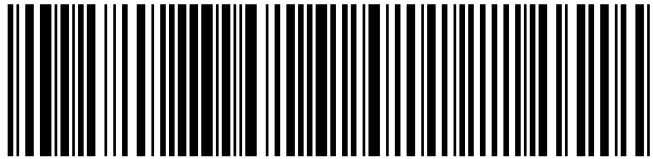
A handwritten signature in blue ink, appearing to read 'Trevor B. Arnold', with a stylized, cursive script.

Trevor B. Arnold, B.C.S.

TBA/NKB

USPS CERTIFIED MAIL

GrayRobinson P A
301 E Pine St Ste 1400
Orlando FL 32801-2798



9214 8901 8318 2900 0242 49

BBI CONSTRUCTION MANAGEMENT INC
C/O: JOE BURNS REGISTERED AGENT
4639 NW 53RD AVE
GAINESVILLE FL 32653-4857

GRAY ROBINSON
ATTORNEYS AT LAW



Trevor B. Arnold, Esq., B.C.S.

Chair, Construction

407-244-5692

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NAPLES
ORLANDO
TALLAHASSEE
TAMPA
WEST PALM BEACH

April 12, 2022

VIA CERTIFIED MAIL

Christy Allison
Attorney-in-Fact, Westfield Insurance Company
2811 N.W. 41st Street
Gainesville, FL 32606

Westfield Insurance Company
1 Park Circle, PO Box 5001
Westfield Center, OH 44251-5001

Re: **Notice of Claim Pursuant to Chapter 558, Florida Statutes**
Holland Park Phase 2 Improvements
18 Florida Park Drive North
Palm Coast, Florida 32164

Dear Ms. Allison:

Our law firm represents the City of Palm Coast (the "City") with regard to the Holland Park Phase 2 Improvements Project. As you may know, BBI Construction Management, Inc. ("BBI") entered into an agreement with the City for BBI to provide construction management services for improvements to James F. Holland Park, which included the installation of a new splash pad (the "Project"). Westfield Insurance Company ("Westfield") issued a Performance Bond to BBI with regard to the Project. As a result of design and construction deficiencies, the splash pad has failed and is unable to operate as intended.

Accordingly, this correspondence serves as the City's Notice of Claim of Construction Defects (the "Notice of Claim"), pursuant to Section 558.004, *Florida Statutes*. Pursuant to Section 3.1 of the Performance Bond, this correspondence further serves to notify Westfield that the City is considering declaring a contractor default. The City's Notice of Claim to BBI is enclosed as **Exhibit "A"** for your review and consideration. On-site investigations revealed a number of issues affecting the Poured-in-Place ("PIP") surfacing of the splash pad, as well as the operation of the splash pad as a whole. These issues include but are not limited to:

- 1) Delamination and micro-foaming of the splash pad surfacing;
- 2) The two Aquatix jumping jets are not functioning properly;

April 12, 2022
Page 2

- 3) The pumping and filtration system is underperforming due to a build-up of dry or gummy substance;
- 4) The blue/black PIP mixture in the toddler splash area is expected to fail as the black material is a recycle rubber product which does not hold up well in the splash pad environment;
- 5) The PIP surface is fading to white;
- 6) The buffings are retaining water and chemicals;
- 7) Due to water retainage in the buffings, the system will suck air at 29 minutes, 27 seconds without the addition of make-up water;
- 8) Due to water retainage in the buffings, the buffings shed water into the wet deck;
- 9) Deck sprays located in the buffings area are underperforming; and
- 10) Due to water retainage in the buffings, the drain is down anywhere from 6-12 hours.

The City's investigation regarding defects and damages is ongoing. The City reserves the right to supplement this correspondence as investigation continues.

Request to Preserve Documents

Westfield is hereby notified not to destroy, conceal, or alter any paper or electronic files, or other information generated by and/or stored on a computer system or storage media, in its possession, custody, or control, including the possession, custody, and control of affiliated companies that were involved in the Project in any manner. The laws and rules prohibiting the destruction of evidence apply to electronically stored information in the same manner that they apply to other evidence. Accordingly, Westfield must take every reasonable step to preserve documents and information until final resolution of this matter. Westfield has an obligation to discontinue all routine document and data destruction. Westfield should also save all documents and electronic data created after it receives this correspondence.

The City has incurred and will incur substantial damages from the defective design and construction, including but not limited to, investigation and destructive testing of the area, repair costs, loss of use, and loss of revenue. Your prompt attention to this matter is necessary, as the City must conduct remediation efforts as soon as possible in order to mitigate further damages.

Pursuant to Section 3.1 of the Performance Bond, the City respectfully requests a conference with Westfield and BBI, to be held within ten (10) business days of receipt of this correspondence, to discuss the issues herein. Additionally, the City is willing to participate in mediation of this matter. The City requires prompt discussion regarding mediation details and requests Westfield to advise

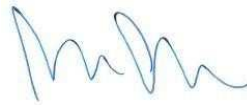
GRAYROBINSON
PROFESSIONAL ASSOCIATION

April 12, 2022
Page 3

within ten (10) calendar days of receipt of this correspondence whether it intends to move forward with mediation efforts. The mediation is to occur within forty-five (45) days of receipt of this correspondence. This request for mediation satisfies condition precedents required of the City.

Please contact our office as soon as possible to set up an amicable date and time for the requested conference.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Trevor B. Arnold', with a stylized, cursive script.

Trevor B. Arnold, B.C.S.

TBA/NKB

EXHIBIT "A"

GRAY ROBINSON
ATTORNEYS AT LAW

Trevor B. Arnold, Esq., B.C.S.

Chair, Construction

407-244-5692

TREVOR.ARNOLD@GRAY-ROBINSON.COM

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April 12, 2022

VIA CERTIFIED MAIL

BBI Construction Management, Inc.
c/o Joe Burns, Registered Agent
4639 NW 53rd Avenue
Gainesville, FL 32653

Re: **Notice of Claim Pursuant to Chapter 558, Florida Statutes**
Holland Park Phase 2 Improvements
18 Florida Park Drive North
Palm Coast, Florida 32164

Dear Mr. Burns:

Our law firm represents the City of Palm Coast (the "City") with regard to the Holland Park Phase 2 Improvements Project. As you know, BBI Construction Management, Inc. ("BBI") entered into an agreement with the City for BBI to provide construction management services for improvements to James F. Holland Park, which included the installation of a new splash pad (the "Project"). As a result of design and construction deficiencies, the splash pad has failed and is unable to operate as intended.

Accordingly, this correspondence serves as the City's Notice of Claim of Construction Defects (the "Notice of Claim"), pursuant to Section 558.004, *Florida Statutes*. Pursuant to Section 3.1 of the Performance Bond issued to BBI by Westfield Insurance Company, this correspondence further serves to notify BBI that the City is considering declaring a contractor default. On-site investigations revealed a number of issues affecting the Poured-in-Place ("PIP") surfacing of the splash pad, as well as the operation of the splash pad as a whole. These issues include but are not limited to:

- 1) Delamination and micro-foaming of the splash pad surfacing;
- 2) The two Aquatix jumping jets are not functioning properly;
- 3) The pumping and filtration system is underperforming due to a build-up of dry or gummy substance;
- 4) The blue/black PIP mixture in the toddler splash area is expected to fail as the black material is a recycle rubber product which does not hold up well in the splash pad environment;
- 5) The PIP surface is fading to white;
- 6) The buffings are retaining water and chemicals;
- 7) Due to water retainage in the buffings, the system will suck air at 29 minutes, 27 seconds without the addition of make-up water;
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- 9) Deck sprays located in the buffings area are underperforming; and
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April 12, 2022
Page 2

The City's investigation regarding defects and damages is ongoing. The City reserves the right to supplement this correspondence as investigation continues.

Pursuant to Section 3.5 of the Parties' Contract, BBI warranted to the City that "materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. [BBI] further warrant[ed] that the Work will conform to the requirements of the Contract Documents and will be free from construction defects. . . ." Additionally, pursuant to BBI's correspondence, dated May 27, 2021, BBI warranted "all labor and materials for the . . . [P]roject . . . for a period of two years from the date of substantial completion for each area or building." As clearly outlined by the correspondence, the splash pad was deemed substantially complete on or about April 22, 2021.

Within thirty (10) days of receiving this Notice of Claim, BBI must provide a copy of this Notice of Claim to any and all contractors, subcontractors, suppliers, design professionals, and consultants whom BBI reasonably believes may be responsible for the defects noted herein. Immediately thereafter, please provide our office with the identity of each subcontractor, supplier, design professional, and/or consultant that BBI used for the Project, the scope of work for each individual or entity identified, and a copy of the relevant subcontract or agreement.

BBI's Written Response

BBI must provide the City with a written response to this Notice of Claim within forty five (45) days of receiving this Notice of Claim. Pursuant to Section 558.004, *Florida Statutes*, the written response must provide the following:

- a) A written offer to remedy the alleged construction defect at no cost to the claimant, a detailed description of the proposed repairs necessary to remedy the defect, and a timetable for the completion of such repairs;
- b) A written offer to compromise and settle the claim by monetary payment that will not obligate the person's insurer and a timetable for making payments;
- c) A written offer to compromise and settle the claim by a combination of repairs and monetary payment, that will not obligate the person's insurer, that includes a detailed description of the proposed repairs and a timetable for the completion of such repairs and making payments;
- d) A written statement that the person disputes the claim and will not remedy the defect or compromise and settle the claim; or
- e) A written statement that a monetary payment, including insurance proceeds, if any, will be determined by the person's insurer within thirty (30) days after notification to the insurer by means of serving the claim, which service shall occur at the same time the claimant is notified of this settlement option, which the claimant may accept or reject. A written statement under this paragraph may also include an offer under paragraph c) above, but such offer shall be contingent upon the claimant also

April 12, 2022
Page 3

accepting the determination of the insurer whether to make any monetary payment in addition thereto. If the insurer for the person served with the claim makes no response within the thirty (30) days following service, then the claimant shall be deemed to have met all conditions precedent to commencing an action.

Request for Production of Materials

Pursuant to Section 558.004(15), *Florida Statutes*, this Notice of Claim also serves as a request for you to produce all records related to your services at the Project, including but not limited to, design plans, specifications, as built plans, subcontracts, and purchase orders. The City offers to pay the reasonable costs of reproduction for any of the foregoing materials, provided that BBI contacts the undersigned counsel before incurring costs in excess of \$100.00. The discoverability and admissibility of any materials shared with this notice or in response to the above request shall be governed by Section 558.004(15), *Florida Statutes*. The City hereby reserves the right to supplement its request for documents relevant to the construction process as investigation continues.

Pursuant to Section 558.004, *Florida Statutes*, BBI may contact the undersigned counsel to schedule a mutually convenient time, within thirty (30) days of this letter, to inspect the Project.

Request for Insurance Information

Pursuant to Section 627.4137, *Florida Statutes*, BBI is also required to provide a copy of this letter to each of its liability insurers, who then must issue a statement within thirty (30) days, under oath, from a corporate officer or the insurer's claims manager or superintendent, setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

- a) The name of the insurer;
- b) The name of each insured;
- c) The limits of the liability coverage;
- d) A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement; and
- e) A copy of the policy.

Request to Preserve Documents

BBI is hereby notified not to destroy, conceal, or alter any paper or electronic files, or other information generated by and/or stored on a computer system or storage media, in its possession, custody, or control, including the possession, custody, and control of affiliated companies that were involved in the Project in any manner. The laws and rules prohibiting the destruction of

April 12, 2022
Page 4

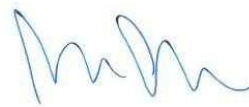
evidence apply to electronically stored information in the same manner that they apply to other evidence. Accordingly, BBI must take every reasonable step to preserve documents and information until final resolution of this matter. BBI has an obligation to discontinue all routine document and data destruction. BBI should also save all documents and electronic data created after it receives this correspondence.

The City has incurred and will incur substantial damages from the defective design and construction, including but not limited to, investigation and destructive testing of the area, repair costs, loss of use, and loss of revenue. Your prompt attention to this matter is necessary, as the City must conduct remediation efforts as soon as possible in order to mitigate further damages.

As previously mentioned, we respectfully request BBI to advise of its position with respect to the issues set forth herein within forty-five (45) days of receipt of this correspondence. Additionally, pursuant to Section 3.1 of the Performance Bond, the City requests a conference with BBI and Westfield, to be held within ten (10) business days of receipt of this correspondence, to discuss the issues herein. The City is willing to participate in mediation of this matter. The City requires prompt discussion regarding mediation details and requests BBI to advise within ten (10) calendar days of receipt of this correspondence whether it intends to move forward with mediation efforts. The mediation is to occur within forty-five (45) days of receipt of this correspondence. This request for mediation satisfies condition precedents required of the City.

Please contact our office as soon as possible to set up an amicable date and time for the requested conference.

Sincerely,

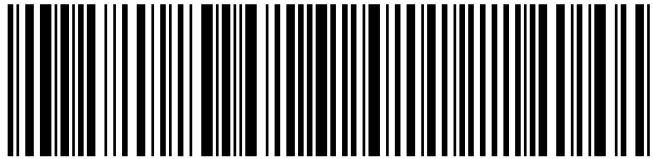
A handwritten signature in blue ink, appearing to read 'Trevor B. Arnold', with a stylized, cursive script.

Trevor B. Arnold, B.C.S.

TBA/NKB

USPS CERTIFIED MAIL

GrayRobinson P A
301 E Pine St Ste 1400
Orlando FL 32801-2798



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CHRISTY ALLISON
ATTORNEY-IN-FACT WESTFIELD INSURANCE COMPANY
2811 NW 41ST ST
GAINESVILLE FL 32606-7463

USPS CERTIFIED MAIL

GrayRobinson P A
301 E Pine St Ste 1400
Orlando FL 32801-2798



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WESTFIELD INSURANCE COMPANY
PO BOX 5001
WESTFIELD CTR OH 44251-5001

GRAY ROBINSON
ATTORNEYS AT LAW



Trevor B. Arnold, Esq., B.C.S.

Chair, Construction

407-244-5692

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April 12, 2022

VIA CERTIFIED MAIL AND EMAIL – David.Starr@playpower.com

David Starr
Senior Vice President & General Counsel
PlayPower, Inc.
2580 Esters Blvd., Suite 100
Irving, TX 75261

No Fault LLC
c/o C T Corporation System, Registered Agent
1200 S. Pine Island Road
Plantation, FL 33324

Cary Glay, Manager
No Fault LLC
11515 Vanstory Dr., Suite 100
Huntersville, NC 28078

Re: **Notice of Claim Pursuant to Chapter 558, Florida Statutes**
Holland Park Phase 2 Improvements
18 Florida Park Drive North
Palm Coast, Florida 32164

Dear Mr. Starr:

Our law firm represents the City of Palm Coast (the "City") with regard to the Holland Park Phase 2 Improvements Project. As you know, No Fault LLC ("No Fault") entered into an agreement with BBI Construction Management, Inc ("BBI") to provide Pour-in-Place surfacing installation for a new splash pad at James F. Holland Park (the "Project"). As a result of design and construction deficiencies, the splash pad has failed and is unable to operate as intended.

Accordingly, this correspondence serves as the City's Notice of Claim of Construction Defects (the "Notice of Claim"), pursuant to Section 558.004, *Florida Statutes*. On-site investigations revealed a number of issues affecting the Poured-in-Place ("PIP") surfacing of the splash pad, as well as the operation of the splash pad as a whole. These issues include but are not limited to:

- 1) Delamination and micro-foaming of the splash pad surfacing;
- 2) The two Aquatix jumping jets are not functioning properly;
- 3) The pumping and filtration system is underperforming due to a build-up of dry or gummy substance;

April 12, 2022
Page 2

- 4) The blue/black PIP mixture in the toddler splash area is expected to fail as the black material is a recycle rubber product which does not hold up well in the splash pad environment;
- 5) The PIP surface is fading to white;
- 6) The buffings are retaining water and chemicals;
- 7) Due to water retainage in the buffings, the system will suck air at 29 minutes, 27 seconds without the addition of make-up water;
- 8) Due to water retainage in the buffings, the buffings shed water into the wet deck;
- 9) Deck sprays located in the buffings area are underperforming; and
- 10) Due to water retainage in the buffings, the drain is down anywhere from 6-12 hours.

The City's investigation regarding defects and damages is ongoing. The City reserves the right to supplement this correspondence as investigation continues.

Within thirty (10) days of receiving this Notice of Claim, No Fault must provide a copy of this Notice of Claim to any and all contractors, subcontractors, suppliers, design professionals, and consultants whom No Fault reasonably believes may be responsible for the defects noted herein. Immediately thereafter, please provide our office with the identity of each subcontractor, supplier, design professional, and/or consultant that No Fault used for the Project, the scope of work for each individual or entity identified, and a copy of the relevant subcontract or agreement.

No Fault's Written Response

No Fault must provide the City with a written response to this Notice of Claim within forty five (45) days of receiving this Notice of Claim. Pursuant to Section 558.004, *Florida Statutes*, the written response must provide the following:

- a) A written offer to remedy the alleged construction defect at no cost to the claimant, a detailed description of the proposed repairs necessary to remedy the defect, and a timetable for the completion of such repairs;
- b) A written offer to compromise and settle the claim by monetary payment that will not obligate the person's insurer and a timetable for making payments;
- c) A written offer to compromise and settle the claim by a combination of repairs and monetary payment, that will not obligate the person's insurer, that includes a detailed description of the proposed repairs and a timetable for the completion of such repairs and making payments;
- d) A written statement that the person disputes the claim and will not remedy the defect or compromise and settle the claim; or
- e) A written statement that a monetary payment, including insurance proceeds, if any, will be determined by the person's insurer within thirty (30) days after notification to the insurer by means of serving the claim, which service shall occur at the same time the claimant is notified of this settlement option, which the claimant may accept or

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Page 3

reject. A written statement under this paragraph may also include an offer under paragraph c) above, but such offer shall be contingent upon the claimant also accepting the determination of the insurer whether to make any monetary payment in addition thereto. If the insurer for the person served with the claim makes no response within the thirty (30) days following service, then the claimant shall be deemed to have met all conditions precedent to commencing an action.

Request for Production of Materials

Pursuant to Section 558.004(15), *Florida Statutes*, this Notice of Claim also serves as a request for you to produce all records related to your services at the Project, including but not limited to design plans, specifications, as built plans, subcontracts, and purchase orders. The City offers to pay the reasonable costs of reproduction for any of the foregoing materials, provided that No Fault contacts the undersigned counsel before incurring costs in excess of \$100.00. The discoverability and admissibility of any materials shared with this notice or in response to the above request shall be governed by Section 558.004(15), *Florida Statutes*. The City hereby reserves the right to supplement its request for documents relevant to the construction process as investigation continues.

Pursuant to Section 558.004, *Florida Statutes*, No Fault may contact the undersigned counsel to schedule a mutually convenient time, within thirty (30) days of this letter, to inspect the Project.

Request for Insurance Information

Pursuant to Section 627.4137, *Florida Statutes*, No Fault is also required to provide a copy of this letter to each of its liability insurers, who then must issue a statement within thirty (30) days, under oath, from a corporate officer or the insurer's claims manager or superintendent, setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

- a) The name of the insurer;
- b) The name of each insured;
- c) The limits of the liability coverage;
- d) A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement; and
- e) A copy of the policy.

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Page 4

Request to Preserve Documents

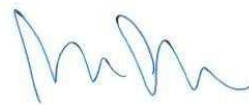
No Fault is hereby notified not to destroy, conceal, or alter any paper or electronic files, or other information generated by and/or stored on a computer system or storage media, in its possession, custody, or control, including the possession, custody, and control of affiliated companies that were involved in the Project in any manner. The laws and rules prohibiting the destruction of evidence apply to electronically stored information in the same manner that they apply to other evidence. Accordingly, No Fault must take every reasonable step to preserve documents and information until final resolution of this matter. No Fault has an obligation to discontinue all routine document and data destruction. No Fault should also save all documents and electronic data created after it receives this correspondence.

The City has incurred and will incur substantial damages from the defective design and construction, including but not limited to, investigation and destructive testing of the area, repair costs, loss of use, and loss of revenue. Your prompt attention to this matter is necessary, as the City must conduct remediation efforts as soon as possible in order to mitigate further damages.

As previously mentioned, we respectfully request No Fault to advise of its position with respect to the issues set forth herein within forty-five (45) days of receipt of this correspondence. Additionally, the City is willing to participate in mediation of this matter. The City requires prompt discussion regarding mediation details and requests No Fault to advise within ten (10) calendar days of receipt of this correspondence whether it intends to move forward with mediation efforts. The mediation is to occur within forty-five (45) days of receipt of this correspondence. This request for mediation satisfies condition precedents required of the City.

Please feel free to contact us to further discuss this matter.

Sincerely,

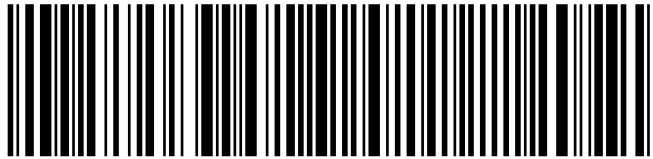
A handwritten signature in blue ink, appearing to read 'Trevor B. Arnold', with a stylized, cursive script.

Trevor B. Arnold, B.C.S.

TBA/NKB

USPS CERTIFIED MAIL

GrayRobinson P A
301 E Pine St Ste 1400
Orlando FL 32801-2798

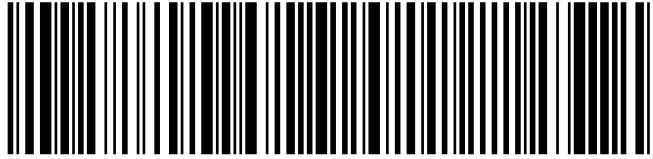


9214 8901 8318 2900 0242 87

DAVID STARR, ESQ.
PLAYPOWER, INC.
2580 ESTERS BLVD., STE. 100
IRVING, TX 75261

USPS CERTIFIED MAIL

GrayRobinson P A
301 E Pine St Ste 1400
Orlando FL 32801-2798

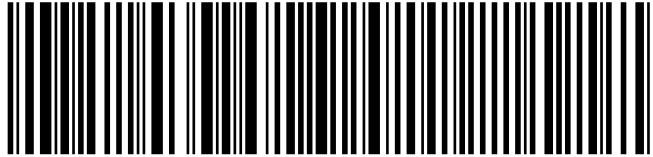


9214 8901 8318 2900 0242 94

NO FAULT LLC
C/O: CT CORPORATION SYSTEM REGISTERED AGENT
1200 S PINE ISLAND RD
PLANTATION FL 33324-4413

USPS CERTIFIED MAIL

GrayRobinson P A
301 E Pine St Ste 1400
Orlando FL 32801-2798



9214 8901 8318 2900 0243 00

CARY CLAY
NO FAULT, LLC
11515 VANSTORY DR., STE 100
HUNTERSVILLE, NC 28078

EXHIBIT “F”



**CONSTRUCTION
MANAGEMENT, INC.**

Design-Build
General Contracting
Construction Management

May 27, 2021

City of Palm Coast
160 Lake Avenue
Palm Coast, FL 32164

Reference: PO# 20181061 – Holland Park Phase 2

Reference:

To Whom It May Concern:

BBI Construction Management, Inc. hereby warrants all labor and materials for the above referenced project, in accordance with the plans and specifications, for a period of two years from the date of substantial completion for each area or building as detailed below.

Area/ Building	Substantial Completion Date
Pavilion 3 – Restroom & Picnic	October 28 th , 2019
Maintenance Building	December 27 th , 2019
Bocce Pavilion	February 28 th , 2020
Poligon Shelters	June 5 th , 2020
Playgrounds	July 25 th , 2020
Pump House	January 19 th , 2021
Splash Pad	April 22 nd , 2021

Sincerely,

Joe Burns, P.E.
President

JB/jrc