

GENERAL CONDITIONS FOR CONSTRUCTION

**ATTACHMENT 1 – GENERAL CONDITIONS FOR CONSTRUCTION**

**DEFINITIONS AND TERMS**

The terms used in these specifications are defined as follows:

- Owner:** The City of Wilton Manors, a Florida municipal corporation.
- Project Manager:** The Owner's Representative assigned by the Owner to manage the Project.
- Engineer:** The person, firm or corporation designated by the Owner to perform engineering services in association with the Project.
- Contractor:** The person, firm or corporation with whom this Contract is executed by the Owner.
- Subcontractor:** Any person, firm or corporation other than the Contractor supplying material or labor for work at the site of the project. Such person or firm has contractual relations with the Contractor, but not with the Owner.
- Surety:** Any person, firm or corporation that has executed as Surety the Contractor's performance bond securing the performance of this Contract.
- Contract:** The agreement executed by the Owner and the Contractor covering the work to be performed and including all Contract Documents.
- Specifications:** The detailed written description of the work.
- Drawings:** The drawings listed and described in the Contract Documents.
- Order of Precedence:** The order of precedence from top to bottom for the Contract Documents is Federal Required Contract Provisions, Contract, General Conditions for Construction, Invitation to Bidders, Technical Specifications, then Drawings.
- Project:** The entire construction or installation to be performed as set forth in the Contract Documents.
- Claims and Notices:** A notice is defined to be information rendered by either party to the other upon a condition becoming known pursuant to the following requirements. All claims, requests, substitutions, changes, notices, delays and any and all other forms of notices or claims by the Contractor to the Owner or Engineer must be in writing and promptly presented. If none is so made, it is irrefutably presumed not to have been given by the Contractor to the Owner or Engineer.

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**GC-1 ENTIRE AGREEMENT**

- 1.1 These General Conditions for Construction documents together with the Contract and Technical Specifications, and any documents referenced therein, embody the entire agreement between Owner and Contractor and supersede all other writings, oral agreements, or representations. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms or conditions of these documents shall be valid unless reduced to writing and signed by both parties.

**GC-2 INDEPENDENT CONTRACTOR**

- 2.1 This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that Owner and Contractor are independent contractors under this Agreement and neither is the employee of the other for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The parties shall each retain sole and absolute discretion in the judgment, manner and means of carrying out their activities and responsibilities hereunder, provided further that administrative procedures applicable to services rendered under this Agreement shall be those of each individual party. In providing such services, neither party nor its agents shall act as officers, employees, or agents of the other party. The Parties agree that they are separate and independent enterprises. This Agreement shall not be construed as creating any joint employment relationship or joint venture between the parties and neither party will be liable for any obligation incurred by the other party, including, but not limited to, unpaid minimum wages or overtime premiums.
- 2.2 Contractor represents that it is fully experienced and properly qualified to perform the class of work provided for herein, and that it is properly licensed, equipped, organized and financed to perform such work. Contractor shall act as an independent contractor and not as the agent of Owner in performing the Contract, maintaining complete control over its employees and all of its suppliers and subcontractors. Nothing contained in this Contract or any subcontract awarded by Contractor shall create any contractual relationship between any such supplier or subcontractor and Owner. Contractor shall perform all work in accordance with its own methods subject to compliance with the Contract. Contractor represents that all subcontractor agreements entered into shall incorporate by reference the terms and conditions of this Contract, and further warrants that the Owner is an intended express third party beneficiary of any such subcontract.

**GC-3 AUTHORIZED REPRESENTATIVES**

- 3.1 Before starting work, Contractor shall designate a competent, authorized representative acceptable to Owner to represent and act for Contractor and shall inform Owner in writing, of the name and address of such representative together with a clear definition of the scope of his authority to represent and act for Contractor and shall specify any and all limitations of such authority. At the Pre- construction Conference, Contractor shall provide resumes of key personnel for Owner's approval. Contractor shall keep Owner informed in writing pursuant to the notice requirements provided herein of any subsequent changes in the foregoing. Such representative shall be present or duly represented at the site of work at all times when work is actually in progress.

- 3.2 From the time of execution of the Contract, the Owner shall have the right to remove the Contractor's representative from the project for inappropriate behavior including, but not limited to, lack of concern for residents, or acting in an unprofessional manner (i.e. argumentative with residents or Owner's representative and the use of foul language).
- 3.3 During periods when work is suspended, arrangements for an authorized representative, acceptable to Owner, shall be made for any emergency work that may be required. All notices, determinations, instructions and other communications given to the authorized representatives of the Contractor shall be binding upon Contractor. Nothing contained herein shall be construed as modifying the Contractor's duty of supervision and fiscal management as provided for by Florida law.
- 3.4 The Owner shall designate a Project Manager who will have limited authority to act for the Owner. The Owner will notify the Contractor in writing of the name of such representative(s). **Facility users and other City employees are not authorized Owner representatives.** Any work performed by the Contractor without proper written authorization from the Project Manager, or at the direction of a Facility user, or any other person either working on or associated with the project, is performed at the Contractor's risk, and the City shall have no obligation to compensate the Contractor for such work.

**GC-4 NOTICES**

- 4.1 Any notices provided for hereunder shall be in writing and may be served either personally on the authorized representative of the receiving party at the jobsite or by certified mail to that party at the addresses shown below:

**City of Wilton Manors  
2020 Wilton Drive  
Wilton Manors, Florida 33305  
Attn: Roberta Moore**

**GC-5 LAWS AND REGULATIONS AND PERMITS**

- 5.1 Contractor and its employees and representatives shall at all times comply with all applicable laws, codes, ordinances, statutes, rules or regulations in effect at the time work is performed under this Contract.
- 5.2 If, during the term of this Contract, there are any changed or new laws, ordinances or regulations not known or foreseeable at the time of signing this Contract which become effective and which affect the cost or time of performance of the Contract, Contractor shall immediately notify Owner in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Contract. Upon concurrence by Owner as to the effect of such

changes, an adjustment in the compensation and/or time of performance will be made, if applicable.

- 5.3 If any discrepancy or inconsistency should be discovered between the Contract and any law, ordinance, regulation, order or decree, Contractor shall immediately report the same in writing to Owner who will issue such instructions as may be necessary. However, it shall not be grounds for a Change Order that the Contractor was unaware of or failed to investigate the rules, codes, regulations, statutes, and all ordinances of all applicable governmental agencies having jurisdiction over the Project or the work.
- 5.4 Contractor is required to obtain and pay for all required permits and licenses.

**GC-6 STANDARDS AND CODES**

- 6.1 Wherever references are made in the Contract to standards or codes in accordance with which work is to be performed or tested, the edition or revision of the standards or codes current on the effective date of this Contract shall apply, unless otherwise expressly set forth.

Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes. In case of conflict among any referenced standards and codes or between any referenced standards and codes the Project Manager will determine which shall govern. Contractor acknowledges that compliance with code requirements represents minimum standards for construction and is not evidence that the work has been completed in accordance with the Contract Documents

**GC-7 CODE RELATED INSPECTIONS**

- 7.1 The Contractor recognizes that the City of Wilton Community Development Services/Department (CDS) is a separate department within the City that is charged with the inspection of improvements to real property for code compliance. The improvements to be made by the Contractor pursuant to this contract may be subject to inspection by CDS. The Contractor agrees that it will not assert, as a City-caused delay or as a defense of any delay on the part of the Contractor, any good faith action or series of actions on the part of CDS, including, but not limited to DCS/BD's refusal to accept any portion of the Contractor's work.

**GC-8 GOVERNING LAW**

- 8.1 The Contract shall be governed by the laws of the State of Florida and venue of any action arising out of this contract shall be in Broward County, Florida.

**GC-9 RIGHTS AND REMEDIES**

- 9.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

**GC-10 COMMERCIAL ACTIVITIES**

- 10.1 Contractor shall not establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on lands owned or controlled by

Owner. Contractor shall not allow its employees or subcontractors to engage in any commercial activities on the Project site.

### **GC-11 COOPERATION WITH OTHERS**

- 11.1 Owner and other contractors and subcontractors may be working at the site during the performance of this Contract. Contractor shall fully cooperate with the Project Manager and other contractors to avoid any delay or hindrance of their work. Project Manager may require that Contractor use certain facilities concurrently and other parties and Contractor shall comply with such requirements.
- 11.2 If any part of the Contractor's work depends on proper execution or results from any work performed by the Owner or any separate contractor, the Contractor shall, prior to proceeding with the work, promptly report to the Project Manager any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor to report such discrepancies or defects shall constitute an acceptance of the Owner's separate contractors' work as fit and proper to receive his work, except as to defects, which may subsequently become apparent in such work performed by others. Any costs caused by defective or ill-timed work of others shall be borne by the Contractor unless Contractor gives written notice to Project Manager, if reasonably possible, prior to proceeding with the work, and in any event within three (3) days of commencement of work. In no event, however, shall the Owner be liable to the contractor for delay damages as provided for in the Contract Documents.

### **GC-12 FORMS AND DOCUMENTS**

- 12.1 The below listed documents are to be used by the Contractor and Owner during the administration of this contract. Additional administrative forms may supplement this list upon written notice by the Project Manager. All such documents are incorporated herein and made a specific part hereof. Project Manager reserves the right to modify these forms as deemed necessary.
- 12.1.1 Application and Certificate for Payment
  - 12.1.2 Field Change Directive
  - 12.1.3 Submittal Requirements/Record
  - 12.1.4 Request for Information (RFI)
  - 12.1.5 Shutdown Request
  - 12.1.6 Engineering ROW Permit Procedure
  - 12.1.7 Project Sign Format
- 12.2 Copies of items 12.1.1 through 12.1.7 will be given to the Contractor at the Pre- Construction

Meeting. City reserves the right to add to or modify the forms, content or format of the administrative forms during the Project.

12.3 Refer to GC-32 PRE-CONSTRUCTION MEETING for additional requirements.

### **GC-13 PUBLICITY AND ADVERTISING**

13.1 Contractor shall not make any announcement or release any information or publish any photographs concerning this Contract or the Project or any part thereof to any member of the public, press or any official body, unless prior written consent is obtained from Project Manager.

### **GC-14 TAXES**

14.1 Contractor shall pay all taxes, levies, duties and assessments of every nature that may be applicable to any work under this Contract. The Contract Sum and any agreed variations thereof shall include all taxes imposed by law. Contractor shall make any and all payroll deductions required by law. Contractor herein indemnifies and holds the Owner harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions. Such indemnification shall be in accordance with the terms and conditions of GC-26 INDEMNITY as provided herein below.

14.2 Owner and Contractor hereby acknowledge that Owner is a tax-exempt entity. Where applicable, and so directed by the Owner, the Owner reserves the right to implement, at its convenience, a tax exemption program to buy selected materials and place the tax savings in line item contingency.

### **GC-15 SUCCESSORS, ASSIGNS AND ASSIGNMENT**

15.1 The Owner and the Contractor each bind itself, its officers, directors, qualifying agents, partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract. It is agreed that the Contractor shall not assign, transfer, convey or otherwise dispose of the contract or its right, title or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without previous consent of the Owner and concurred to by the sureties.

### **GC-16 COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS**

16.1 The Contractor represents that the Contractor, Subcontractors, material and equipment suppliers have compared Phasing, Demolition, Architectural, Structural, Mechanical, Electrical, Plumbing, Civil and Site Drawings and Specifications, and have compared and reviewed all general and specific details on the Drawings, and that all conflicts, discrepancies, errors and omissions, which are within the commonly accepted knowledge base of a licensed general contractor, subcontractors, trades persons, manufacturers or other parties required to carry out the Work involved in this Contract, have been either corrected or clarified prior to execution of this Contract.

- 16.2 The Contractor represents that the Contract Sum represents the total cost for complete and functional systems and therefore, the Contractor's review and comparison of all Drawings has taken into consideration the total and complete functioning of all systems.

**GC-17 CONTRACT INTERPRETATION**

- 17.1 All claims of Contractor and all questions the Contractor may have concerning interpretation or clarification of this Contract or its acceptable fulfillment shall be submitted immediately in writing to Project Manager for resolution.
- 17.2 Project Manager will render its determination in writing within seven (7) calendar days concerning such resolution, which determination shall be considered final and conclusive unless Contractor files a written protest pursuant to GC-18 DISPUTES. The Contractor's protest shall state clearly and in detail the basis thereof. Project Manager will consider Contractor's protest and render its decision, in writing thereon within twenty-one (21) calendar days. If Contractor does not agree with the Project Manager's decision, the Contractor shall immediately deliver written notice to that effect to the Owner.
- 17.3 Contractor is solely responsible for requesting instructions or interpretations and is solely liable for any costs and/or expenses arising from its failure to do so. Contractor's failure to protest Owner's determinations, instructions, clarifications or decisions within seven (7) calendar days, after receipt thereof, shall constitute a waiver by Contractor of all its rights to further protest, judicial or otherwise.

**GC-18 DISPUTES**

- 18.1 Any dispute relating to a question of fact arising under this Contract shall be resolved through good faith efforts upon the part of Contractor and Owner or its representatives. At all times, Contractor shall carry on the work and maintain its progress schedule in accordance with the requirements of the Contract and the determination of the Owner or its representatives, pending resolution of any dispute. The Owner, or its representatives, who shall reduce such decision to writing, shall decide any dispute that is not disposed of by mutual agreement. The decision of the Owner or its representatives shall be final and conclusive.

**GC-19 SUSPENSION**

- 19.1 The Project Manager, at its sole option, may decide to suspend, at any time, the performance of all or any portion of work to be performed under the Contract. Contractor will be notified of such decision by Project Manager in writing. Such notice of suspension of work may designate the amount and type of labor and equipment to be committed to the work site. During the period of suspension, Contractor shall use its best efforts to utilize its labor and equipment in such a manner as to minimize costs associated with suspension.
- 19.2 Upon receipt of any such notice to suspend, Contractor shall, unless the notice requires otherwise:
- 19.2.1 Immediately discontinue work on the date and to the extent specified in the notice;

- 19.2.2 Place no further orders or subcontracts for material, services, or facilities with respect to suspended work other than to the extent required in the notice;
  - 19.2.3 Promptly make every reasonable effort to obtain suspension, upon terms satisfactory to Project Manager, of all orders, subcontracts and rental agreements to the extent they relate to performance of work suspended;
  - 19.2.4 Continue to protect and maintain the work including those portions on which work has been suspended; and
  - 19.2.5 Take any other reasonable steps to minimize costs associated with such suspension.
- 19.3 As full compensation for such suspension, Contractor will be reimbursed for the following verifiable costs (without profit), without duplication of any item, to the extent that such costs directly result from such suspension of work:
- 19.3.1 A standby charge to be paid to Contractor during the period of suspension of work which standby charge shall be sufficient to compensate Contractor for keeping, to the extent required in the notice, its organization and equipment committed to the work in a standby status; or,
  - 19.3.2 All reasonable costs associated with mobilization and demobilization of Contractor's forces and equipment; or,
  - 19.3.3 An equitable amount to reimburse Contractor for the cost of maintaining and protecting that portion of the work upon which work has been suspended; or,
  - 19.3.4 If, as a result of any such suspension of work, the cost to Contractor of subsequently performing work is increased or decreased, an equitable adjustment will be made in the cost of performing the remaining portion of work.

In no event shall the Contractor be entitled to assert a claim for home office overhead in accordance with the Eichleay Formula or otherwise, in the event of a Project Manager suspension. Upon receipt of notice to resume suspended work, Contractor shall immediately resume performance of the suspended work to the extent required in the notice. Any claim on the part of Contractor for time and/or compensation arising from suspension shall be made within twenty-one (21) calendar days after receipt of notice to resume work, and upon resumption of performance of the suspended work, Contractor shall submit for review a revised Construction Schedule for review by the Project Manager.

- 19.4 No adjustment shall be made for any suspension to the extent that performance would have been suspended, delayed, or interrupted pursuant to any non-compliance by Contractor with the requirements of this Contract.

**GC-20 DECLARATION OF DEFAULT**

20.1 The failure of the Contractor to supply enough properly skilled workers or material, to make prompt payment to Subcontractors or for materials or labor, or to obey laws, ordinances, rules, regulations or orders of public agencies having jurisdiction, or to comply in any way with the Contract Documents, shall be sufficient grounds for the Owner to find the Contractor in substantial default and that sufficient cause exists to terminate the Contract and to withhold payment or any part thereof until the cause or causes giving rise to the default has been eliminated by the Contractor and approved by the Owner. If a finding of default is made, the Contractor and its Surety shall be notified in writing and remain responsible for performance of the requirements of the Contract Documents unless and until the Owner terminates the Contract. Upon a finding of default, the Contractor and its Surety shall eliminate the cause or causes of default within ten (10) days or as agreed to by the Owner and Contractor. When the basis for finding of default no longer exists, the Owner shall notify the Contractor and its Surety in writing that the default has been corrected and that the Contractor is no longer in default. If the Contractor fails to correct the default within the time allowed, the Owner may terminate the Contract and the employment of the Contractor, without otherwise waiving its rights against the Contractor or its Surety.

**GC-21 TERMINATION FOR DEFAULT**

21.1 Notwithstanding any other provisions of this Contract, Contractor shall be considered in default of its contractual obligation under this Contract if it:

21.1.1 Performs work which fails to conform to the requirements of this Contract;

21.1.2 Fails to meet the Contract schedule or fails to make progress so as to endanger performance of this Contract;

21.1.3 Abandons or refuses to proceed with any or all work including modifications directed pursuant to the clause entitled GC-46 FIELD CHANGE DIRECTIVES/CHANGE ORDERS; or

21.1.4 Fails to fulfill any of the terms of this Contract.

21.2 Upon the occurrence of any of the foregoing, Owner, or its project representatives, shall notify Contractor in writing of the nature of the failure and of Owner's intention to either terminate the Contract for default, or to declare the Contractor to be in default and make demand upon its Surety to perform, at its sole option.

21.3 If Contractor or its Surety(ies) does not cure such failure within three (3) calendar days from receipt of notification, or sooner, if consideration of safety to persons is involved, or if Contractor or its Surety(ies) fails to provide satisfactory evidence that such default will be corrected, Owner may, without notice to Contractor's Surety(ies), if any, terminate in whole or in part Contractor's right to proceed with work by written notice and prosecute the work to completion by contract or by any other method deemed expedient. Owner may take possession of and utilize any materials, tools, equipment, and property of any kind furnished by Contractor and necessary to complete the work.

21.4 Contractor and its Sureties, if any, shall be liable jointly and severally for all costs in excess of

the contract price for such terminated work reasonably and necessarily incurred in the completion of the work as scheduled, including cost of administration of any contract awarded to others for completion and for liquidated damages.

- 21.5 Upon termination for default Contractor shall:
- 21.5.1 Immediately discontinue work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of work terminated;
  - 21.5.2 Inventory, maintain and turn over to Owner all materials, tools, equipment, and property furnished by Contractor or provided by Owner for performance of work;
  - 21.5.3 Promptly obtain cancellation upon terms satisfactory to Owner of all purchase orders, subcontracts, rentals, or any other agreements existing for performance of the terminated work or assign those agreements to Owner as directed;
  - 21.5.4 Cooperate with Owner in the transfer of information and disposition of work in progress so as to mitigate damages;
  - 21.5.5 Comply with other reasonable requests from Owner regarding the terminated work; and
  - 21.5.6 Continue to perform in accordance with all of the terms and conditions of the Contract such portion of work that is not terminated.
- 21.6 If, upon termination pursuant to this clause, it is determined for any reason that Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause entitled.

## **GC-22 OPTIONAL TERMINATION**

- 22.1 Owner may, at its option, terminate the Contract, in whole or in part, at any time by written notice thereof to Contractor, whether or not Contractor is in default. Upon any such termination, Contractor hereby waives any claims for damages from the optional termination, including loss of anticipated profits, on account thereof, but as the sole right and remedy of Contractor, Owner shall pay Contractor in accordance with Subparagraphs below, provided, however, that those provisions of the Contract which by their very nature survive final acceptance under the Contract shall remain in full force and effect after such termination.
- 22.2 Upon receipt of any such notice, Contractor and its Surety shall, unless the notice requires otherwise:
- 22.2.1 Immediately discontinue work on the date and to the extent specified in the notice;
  - 22.2.2 Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the Contract that is not terminated;
  - 22.2.3 Promptly make every reasonable effort to obtain cancellation upon terms satisfactory to Owner of all orders and subcontracts to the extent they relate to the performance of work terminated or assign to Owner those orders and subcontracts and revoke

agreements specified in such notice;

- 22.2.4 Assign all Subcontracts required for performance of this Contract to the Owner. In anticipation of such a remedy, the Contractor shall include in all Subcontracts, equipment leases and purchase order, a provision requiring the subcontractor, equipment lessor or supplier, to consent to the assignment of their Subcontract to the Owner;
  - 22.2.5 Assist Owner, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by Owner under the Contract; and
  - 22.2.6 Complete performance of any work that is not terminated.
- 22.3 Upon any such termination, Owner will pay to Contractor an amount determined in accordance with the following (without duplication of any item):
- 22.3.1 All amounts due and not previously paid to Contractor for work complete and accepted in accordance with the Contract prior to such notice, and for work thereafter completed as specified in such notice.
  - 22.3.2 The reasonable cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in Subparagraph 22.2.3 above.
  - 22.3.3 The verifiable costs incurred pursuant to Subparagraph 22.2.3 above.
  - 22.3.4 Any other reasonable costs which can be verified to be incidental to such termination.
- 22.4 The foregoing amounts will include a reasonable sum, under all of the circumstances, as profit for all work satisfactorily performed by Contractor.
- 22.5 Contractor shall submit within thirty (30) days after receipt of notice of termination, a proposal for an adjustment to the contract price including all incurred costs described herein. Owner shall review, analyze, and verify such proposal, and negotiate an equitable adjustment, and the Contract shall be amended in writing accordingly.

**GC-23 EXTENSION OF TIME/NO DAMAGES FOR DELAY**

- 23.1 If the Contractor's performance of this Contract is delayed, which delay is beyond the reasonable control and without the fault or negligence of the Contractor or its subcontractors, or by changes ordered in the Work and in either event where such delay or change in the work impacts the Construction Schedule, then the Contract time shall be extended by a Field Change Directive as issued by the Project Manager.
- 23.2 The Contractor must request the extension of time in writing and must provide the following information within the time periods stated hereafter within seven (7) days. Failure to submit such information and in compliance with the time requirements hereinafter stated, shall constitute a waiver by the Contractor and a denial of the claim for extension of time:

- 23.2.1 Nature of the delay or change in the work;
  - 23.2.2 Dates of commencement/cessation of the delay or change in the work;
  - 23.2.3 Activities on the progress schedule current as of the time of the delay or change in the work affected by the delay or change in the work;
  - 23.2.4 Identification and demonstration that the delay or change in work impacts the Construction Schedule;
  - 23.2.5 Identification of the source of delay or change in the work;
  - 23.2.6 Anticipates impact extent of the delay or change in the work, and
  - 23.2.7 Recommended action to minimize the delay
- 23.3 The Contractor acknowledges and agrees that the evaluation of time extensions will be based upon the following criteria:
- 23.3.1 All schedule updates, submittals and other requirements of this General Condition have been met;
  - 23.3.2 The delay must be beyond the control of the Contractor and subcontractors and due to no direct or indirect fault of the Contractor;
  - 23.3.3 The delay which is the subject of the time extension must result in a direct delay to the Construction Schedule;
  - 23.3.4 The schedule must clearly display that the Contractor has used, in full, all the float time. Float time is not for the exclusive use of either the Contractor or the Owner; an If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be submitted within thirty (30) days of occurrence and shall be documented by data substantiating that weather conditions were abnormal for the period of time required for completion of the Work, could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. All weather related standby time, delays or work suspensions shall be non-compensable.
- 23.4 The Project Manager's determination as to the total number of days of contract extension will be based upon the computer produced Construction Schedule current at the time of the delay event.
- The Contractor shall not be entitled to any extension of time for delays resulting from any cause unless it shall have notified the Project Manager in writing within twenty-four hours (24) after the commencement of such delay or ninety-six (96) hours of knowledge of a potential delay, whichever is earlier. In any event, within seven (7) days of commencement of the delay, the Contractor shall provide in writing the information stated above.
- 23.5 The Contractor shall not be entitled to and hereby waives, any and all damages which it may

suffer by reason of Act of God, unforeseen condition, delay, acceleration, cardinal changes, loss of efficiency or any other impacts to the work or time of performance and further, hereby waives all damages which it may suffer by reason of these events, including, but not limited to lost profits, overhead (whether determined by the Eichleay Formula or otherwise), increased insurance costs, loss of bonding capacity or lost profits on alternate or unperformed contracts, supervision, or home office expense. Contractor hereby affirms that the extension of time granted herein is the Contractor's sole and exclusive remedy. Apart from extension of time, no payment of claim for damages shall be made to the Contractor as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the work whether such delay be avoidable or unavoidable.

- 23.6 For all changes in the work in which the Contractor claims entitlement to a time extension, the Contractor shall provide to the Project Manager the same information as required in Paragraph 23.2 within seven (7) days of the issuance of the request for direction to change the scope of the work. The Contractor's failure to provide such information shall constitute a waiver by the Contractor and a denial of any time extension for that change in the work. Further, upon execution by the Project Manager and Contractor of any Field Change Directive where no time extension has been requested or granted, that Field Change Directive shall constitute a complete waiver of all claims for dollars or for any extension of time related to that work, or any work impacted by the change.

#### **GC-24 WARRANTY**

- 24.1 Unless otherwise provided elsewhere in the Contract, all materials and equipment incorporated into any work covered by the Contract shall be new and, where not specified, of the highest grade of quality for their intended use, and all workmanship shall be in accordance with construction practices acceptable to Owner. Unless otherwise provided in the Contract, Contractor warrants all equipment, materials, and labor furnished or performed under this Contract, against defects in design, materials and workmanship for a period of five (5) years or 1500 hours, whichever occurs first from the date of system start up, unless longer guarantees or warranties are provided for elsewhere in the Contract Documents, in which case the longer periods of time shall prevail, from and after final acceptance of work under the Contract, regardless of whether the same were furnished or performed by Contractor or by any of its subcontractors of any tier. In the event that the Owner assumes partial utilization of portions of the work prior to completion of all Work, the Warranty for that portion shall also extend for five years or 1500 hours, whichever occurs first from final acceptance of that portion of the Work, if and only if the Owner has exclusive use of the area. If the Owner does not have exclusive use of the area, the warranty period shall extend for five years or 1500 hours, whichever occurs first from final acceptance of the last portion of the Work.
- 24.2 Upon receipt of written notice from Project Manager of any defect in any such equipment, materials, or labor during the applicable warranty period, due to defective design, materials or workmanship, the affected item or parts thereof shall be redesigned, repaired or replaced by Contractor at a time and in a manner acceptable to Project Manager.
- 24.3 Contractor warrants such redesigned, repaired or replaced work against defective design, materials and workmanship for a period of five years or 1500 hours, whichever occurs first from and after the date of acceptance thereof. Should Contractor fail to promptly make the necessary redesign, repair, replacement and tests, Owner may perform or cause to be performed the same

at Contractor's expense.

- 24.4 Contractor shall perform such tests as Project Manager may require to verify that such redesign, repairs and replacements comply with the requirements of this Contract. All costs incidental to such redesign, repair, replacement and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access, shall be borne exclusively by Contractor.
- 24.5 Contractor and its Surety(ies) shall be liable for the satisfaction and full performance of the warranties as set forth herein and any damage to other parts of the Work caused by the Contractor's failure to perform pursuant to this general condition.

The Contractor shall commence work to remedy or replace the defective, deficient work within five (5) calendar days after receiving written (including transmittals by facsimile transmission) notice from the Owner. If the Contractor fails to remedy or remove or replace that work or material which has been found to be defective, then the Owner may remedy or replace the defective or deficient work at the Contractor's expense; provided, however, all repairs to natural gas, telephone, radio, computer security, water, electric, air conditioning services and all emergency services shall be commenced within twelve (12) hours of notification, and Contractor shall complete the repairs in an expeditious manner befitting the nature of the deficiency. The Contractor shall immediately pay the expenses incurred by the Owner for remedying the defects. If the Owner is not paid within ten (10) calendar days, the Owner may pursue any and all legal remedies it may have against the Contractor.

- 24.6 The Contractor is required to provide a designated telephone number for warranty related emergencies which occur outside the normal workday. The Contractor is solely responsible for ensuring that all warranty work is completed in the manner described above. If the Owner agrees, in writing, a subcontractor may be the point of contact for notices regarding warranty items, but such agreement shall not absolve the Contractor of his responsibility.

## **GC-25 PATENT INDEMNITY**

- 25.1 Contractor hereby indemnifies and shall defend and hold Owner and its representatives harmless from and against all claims, losses, costs, damages, and expenses, including attorney's fees and paralegal expenses, at both the trial and appellate levels, incurred by Owner and its representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent and arising out of the use of the equipment or materials furnished under the Contract by Contractor, or out of the processes or actions employed by, or on behalf of Contractor in connection with the performance of the Contract. Such indemnification shall be in accordance with the terms and conditions of GC-26 INDEMNITY as provided herein below.
- 25.2 Contractor shall, at its sole expense, promptly defend against any such claim or action unless directed otherwise by Owner or its representatives; provided that Owner or its representatives shall have notified Contractor upon becoming aware of such claims or actions, and provided further that Contractor's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by Owner or representatives. Contractor shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and

processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, material or processes, provided that such substituted and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of this Contract.

**GC-26 INDEMNITY**

- 26.1 Contractor agrees to protect, defend, reimburse, indemnify and hold the Owner, its agents, employees, elected officers and representatives and each of them, (hereinafter collectively and for the purposes of this paragraph, referred to as "Owner"), free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's and paralegal fees at both trial and appellate levels, and causes of action of every kind and character against Owner by reason of any damage to property or the environment, economic losses, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, any agent or employee of any party hereto or of any party acquiring an interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or in incident to or in connection with Contractor's performance under this Contract, the condition of the premises, Contractor's acts, or omissions or operations hereunder, or the performance, non- performance or purported performance of the Contractor of any breach of the terms of this Contract; provided however that Contractor shall not be responsible to Owner for damages resulting out of bodily injury or damages to property which Contractor can establish as being attributable to the sole negligence of Owner, its respective agents, servants, employees or officers.
- 26.2 Contractor further agrees to hold harmless and indemnify Owner for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from its activities on the project, whether or not Contractor was negligent or even knowledgeable of any events precipitating a claim or arising as a result of any situation involving Contractor's activities
- 26.3 Said indemnification by Contractor shall be extended to include all deliverers, suppliers, furnisher of material or anyone acting for, on behalf of, or at the request of Contractor. Contractor recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges that contractor has incorporated in this original bid, which constitutes the Contract sum payable by the Owner to the Contractor, specific additional consideration in the amount of ten dollars (\$10.00) sufficient to support this obligation of indemnification provided for in this paragraph. It is the Owner and Contractor's full intention that this provision shall be enforceable and said provision shall be in compliance with Section 725.06, Florida Statutes. The indemnification required herein shall in no event be less than \$1 million per occurrence or no more than the limits of insurance required herein, whichever is greater. This clause shall survive termination of this Agreement.

**GC-27 INSURANCE**

- 27.1 Unless otherwise specified in this contract, Contractor shall at its sole expense, maintain in effect at all times during the performance of work hereunder, insurance coverage with limits not less than those set forth in ATTACHMENT A, and with insurers and under forms of policies acceptable to Owner. Contractor shall deliver to Owner, Certificates of Insurance, evidencing that such policies are in full force and effect, no later than ten (10) days after receipt of

Award Letter, but in any event prior to execution of the contract by Owner and prior to commencing work on the project site. Such Certificates shall adhere to the conditions set forth in ATTACHMENT A

Contractor shall purchase and maintain during the life of this contract Workers' Compensation insurance, including Employers' Liability, to comply with all applicable State and Federal laws covering all of its employees on the work site, and in accordance with all of the limits, terms and conditions set forth in ATTACHMENT A.

If any work is sublet, Contractor shall require all subcontractors to similarly comply with this requirement unless such subcontractors' employees are covered by Contractor's Workers' Compensation insurance policy. Contractor shall provide endorsements for U.S. Longshoremen's and Harbor Workers' Act and/or Jones Act, if work is on or continuous to navigable bodies of water.

- 27.2 Contractor shall purchase and maintain during the life of this contract, Comprehensive or Commercial General Liability insurance in accordance with all of the limits, terms and conditions set forth in ATTACHMENT A.
- 27.3 Should any of the work hereunder involve watercraft owned or operated by Contractor or any subcontractor, such shall be insured under the Comprehensive or Commercial General Liability policy, or by other such liability insurance such as Protection and Indemnity.
- 27.4 Contractor shall purchase and maintain during the life of this contract Comprehensive Automobile Liability insurance covering all owned, non-owned and hired automobiles with all of the limits, terms and conditions set forth in ATTACHMENT A.
- 27.5 Contractor shall purchase and maintain "All Risk" Builders' Risk insurance, including, but not limited to fire, flood, wind and other water damage. Limits shall be equal to the total construction value of the project. Contractor assumes all deductibles as ongoing cost of doing business. Sub-limits for any coverages are not acceptable if they are less than the total value of the project. The Owner is not providing any insurance on behalf of Contractor for loss of damage to work or to any other property of Contractor. If Contractor maintains any insurance for loss of damage to Contractor's property, such must be endorsed to include a Waiver of Subrogation against the City of Wilton Manors.
- 27.6 Should any of the work hereunder involve the hauling and/or rigging of property, Contractor shall purchase and maintain "All Risk" Transit or Motor Truck Cargo insurance, or similar form of coverage, insuring against physical damage or loss to the property being transported, stored, moved, or handled by Contractor, or any subcontractor pursuant to the terms of this contract, subject to the limits, terms and conditions set forth in the ATTACHMENT A. Limits shall include replacement cost coverage for the highest value involved in the project. The policy must contain a Waiver of Subrogation in favor of the City of Wilton Manors.
- 27.7 Should any of the work hereunder involve aircraft (fixed wing or helicopter) owned or operated by Contractor or any subcontractor, Contractor shall purchase and maintain Aircraft Liability insurance with a limit of \$5,000,000.00 per occurrence.

- 27.8 The requirements contained herein as to types and limits, as well as Owner's approval of insurance coverage to be maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the Contract.
- 27.9 The Certificates of Insurance must provide clear evidence that Contractor's insurance policies contain the minimum limits of coverage and special provisions prescribed in this GC-27 INSURANCE, in accordance with all of the limits, terms and conditions set forth in ATTACHMENT A, or outlined above. Additionally, the Certificates of Insurance shall name the City of Wilton Manors as an additional insured.
- 27.10 All involved policies must be endorsed so that thirty (30) days notification of cancellation and/or any material change(s) in coverage (or such other notice as is provided for in the policy of insurance) shall be provided to the City of Wilton Manors, ATTN: Risk Manager. Insurance shall remain in force until all work required to be performed under the terms of this Contract are satisfactorily completed as evidenced by the final acceptance by Project Manager. In the event that the insurance certificates provided hereunder indicates that the insurance shall terminate and lapse during the period of this Contract then, in that event, the Contractor shall furnish, at least thirty (30) days prior to the expiration of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract, and any extension hereunder, is in effect. Contractor shall not continue to work pursuant to this contract unless all required insurance remains in effect. Owner may withhold payment to the Contractor until coverage is reinstated.
- 27.11 The Contractor shall deliver the original of the initial Certificates of Insurance to:  
**City of Wilton Manors 2020 Wilton Drive  
Wilton Manors, FL 33305  
ATTN: Risk Manager Dio Sanchez**
- 27.12 Notices, in original, of cancellation, terminations and alterations of such policies shall be delivered to:  
**City of Wilton Manors 2020 Wilton Drive  
Wilton Manors, FL 33305  
ATTN: Risk Manager Dio Sanchez**

Proposers must submit with their proposal, Proof of Insurance, meeting or exceeding the following requirements.

- 27.13 The successful Proposer shall secure and maintain, at its own expenses, and keep in effect during the full period of the contract a policy or policies of insurance, which must include the following coverage and minimum limits of liability:
- (a) **Worker's Compensation and Employer's Liability Insurance** for all employees of the successful Proposer engaged in work under the Contract in accordance with the laws of the State of Florida. The Successful Proposer shall agree to be responsible for the employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

- (b) **Comprehensive General Liability Insurance** with the following minimum limits of liability:  
\$ 1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence to include:
  - (1) Premises and Operations;
  - (2) Independent Proposers;
  - (3) Products and Completed Operations;
  - (4) Broad Form Property Damage;
  - (5) Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract;
  - (6) Personal Injury Coverage with employment and contractual exclusions removed and deleted.
  
- (c) **Comprehensive Automobile Liability Insurance** for all owned, non-owned and hired automobiles and other vehicles used by the Proposer in the performance of the work with the following minimum limits of liability:  

\$ 500,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence
  
- (d) Professional/Errors & Omissions - \$250,000.00
  
- (e) Employee dishonesty/theft - \$250,000.00

- 27.14 ALL LIABILITY INSURANCE POLICIES SHALL SPECIFICALLY PROVIDE THAT THE CITY OF WILTON MANORS SHALL BE NAME AND LISTED AS AN ADDITIONAL INSURED. INSURANCE Companies selected must be acceptable to City. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice or such other notice as is required by the policy has been given to City by certified mail. Additionally, in the event the successful Proposer receives notice of cancellation from its insurance company, the successful Proposer shall deliver a copy of such notice to the City within five (5) business days of the receipt of such notice of cancellation.
  
- 27.15 The successful Proposer shall ensure that any company issuing insurance to cover the requirements contained in this Contract agrees that they shall have no recourse against City for payment or assessments in any form on any policy of insurance.
  
- 27.16 The successful Proposer shall not commence work under the Contract until obtaining all of the minimum insurance herein described.
  
- 27.17 The successful Proposer agrees to perform the work under the Contract as an independent proposer, and not as a subcontractor, agent or employee of the City.

- 27.18 The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ or better, in accordance with the latest edition of A.M. Best's Insurance Guide.
- 27.19 The successful Proposer must submit, no later than ten (10) days after award and prior to commencement of any work, a Certificate of Insurance naming the City of Wilton Manors as additional insured.

**GC-28 SITE CONDITIONS**

- 28.1 Contractor shall have the sole responsibility of satisfying itself concerning the nature and location of work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials; availability, quantity and quality of labor, water and electric power; availability and condition of roads; climatic conditions, location of underground utilities as depicted on contract documents, and through verification with local utility companies and the Owner, physical conditions of existing construction, topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; the nature of the ground water conditions; equipment and facilities needed preliminary to and during performance of the Contract; and all other matters which can in any way affect performance of the Contract, or the cost associated with such performance. The failure of Contractor to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully and timely performing the Contract.

**GC-29 DIFFERING SITE CONDITIONS**

- 29.1 Contractor shall notify Project Manager, within twenty-four (24) hours of discovery, in writing and before proceeding with any work which Contractor believes constitutes a differing site condition with respect to: (1) subsurface or latent physical conditions at the jobsite differing materially from those indicated in this Contract; or (2) unknown physical conditions at the jobsite, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
- 29.2 Project Manager will, as promptly as practicable, investigate such conditions, and if it is determined that such conditions do materially differ and cause an increase or decrease in Contractor's cost of or the time required for performance of any part of any work under this Contract, an equitable adjustment will be made and the Contract modified in writing accordingly through a Field Change Directive. No claim of Contractor under this clause will be allowed unless Contractor has given the required notice.

**GC-30 ACCESS TO WORK AREAS**

- 30.1 Project Manager, and his duly authorized representatives and employees, and all duly authorized representatives of governmental agencies having jurisdiction over work areas or any part thereof shall, at all reasonable times, for the purpose of determining compliance with Contract requirements and permits, have access to such areas and the premises used by Contractor.

Contractor shall also arrange for Owner, its said representatives and employees, to have access at all reasonable times to all places where equipment or materials are being manufactured, produced, or fabricated for use under the Contract.

- 30.2 Contractor's access to the site and storage areas shall be as shown on the plans and as designated by the Owner. City employees, the public and other contractors may also use access routes. No other access points shall be allowed unless approved by the Owner. All contractor traffic authorized to enter the site shall be experienced in the route or guided by Contractor personnel. The Contractor is responsible for immediate clean-up of any debris deposited along the access route as a result of his construction traffic.

**GC-31 CONTRACTOR INGRESS AND EGRESS**

- 31.1 Contractor's access to the work area will be permitted only through approaches that will be designated by Project Manager, and then only in such manner that Contractor's traffic will not interfere with Owner's operations. Contractor shall, at all times, maintain free unimpeded ingress and egress at the site. Contractor personnel are not to enter into any areas of the jobsite other than work areas and areas of designated access.

**GC-32 PRE-CONSTRUCTION MEETING**

- 32.1 As soon as practicable after award of this Contract, and prior to commencing any work, a Pre-Construction Meeting will be arranged by the Project Manager. In attendance at said meeting will be Project Manager, Engineer, Contractor's Representative, and any other individuals necessary to discuss the Project. The purpose of said meeting is to determine procedures related to the smooth progress of the Project and to review any items requiring clarification. Procedure for processing and distribution of all documents and correspondence related to the Contract will be established. Attendance by the Contractor at the Pre-Construction Meeting is mandatory.
- 32.2 The following shall be submitted by the Contractor at, or prior to, the Pre- Construction Meeting:
- 32.2.1 A Schedule of Values, conforming to the requirements of GC-48- PROGRESS PAYMENT PROCEDURES.
  - 32.2.2 A Project Schedule, conforming to the requirements of Technical Specifications 01700, EXECUTION REQUIREMENTS.
  - 32.2.3 A List of Subcontractors.
  - 32.2.4 Resumes for Contractor's Project Manager, Superintendent and Foreman for the Project.
  - 32.2.5 Project Safety Plan.
- 32.3 Refer to GC-12 FORMS AND DOCUMENTS for additional information.

**GC-33 CONTRACTOR MEETINGS**

33.1 The Contractor shall, at its expense, as requested by Project Manager, attend any and all meetings called by Project Manager to discuss the work under the Contract. Such meetings shall be conducted and recorded by the Project Manager or designee with typed minutes of each meeting distributed to all attendees within three (3) days of the meeting.

**GC-34 OWNER-FURNISHED DRAWINGS AND SPECIFICATIONS**

34.1 The Contractor shall, immediately upon receipt of the permitted drawings, check all drawings furnished and shall promptly notify Project Manager of any illegibility, errors, omissions or discrepancies discovered in such drawings. The Contractor shall perform work only in accordance with the permitted drawings and technical specifications any subsequent revisions thereto. Contractor shall maintain at the site of the work a copy of the permitted drawings and specifications kept current with all changes and modifications and shall at all times give Project Manager, as well as all trades performing at the project, access thereto.

**GC-35 CONTRACTOR-FURNISHED MATERIALS, EQUIPMENT AND WORKMANSHIP**

35.1 Only new, unused items of recent manufacture, of designated quality, but in no event less than the standard quality for the improvements, free from defects, will be accepted. Rejected items shall be removed immediately from the work and replaced with items of specified quality. Failure by Project Manager to order removal of rejected materials and equipment shall not relieve Contractor from responsibility for quality of the materials supplied or from any other obligation under the Contract Documents.

35.2 Contractor shall continuously check architectural and structural clearances for accessibility of equipment and mechanical and electrical systems. No allowance of any kind will be made for Contractor's negligence to foresee means of installing equipment into position inside structures.

35.3 No work, defective in construction or quality or deficient in meeting any requirement of the contract drawings and specifications, will be acceptable regardless of Project Manager's failure to discover or to point out defects or deficiencies during construction; nor will the presence of field representatives at the work or the satisfaction of the Work meeting applicable code requirements relieve Contractor from responsibility for the quality and securing progress of work as required by the Contract Documents. The Project Manager shall notify the Contractor of defective or unacceptable work if the Project Manager discovers such. Defective work revealed within the time required by warranties (whether expressed or implied) shall be remedied in accordance with the GC-24 WARRANTY. No payment, whether partial or final, shall be construed as an acceptance of defective work or improper materials.

35.4 Contractor shall waive "common practice" and "common usage" as construction criteria wherever details and specifications or governing codes and ordinances require greater quantity or better quality than common practices and common usage would require. Contractor shall order and schedule delivery of materials in reasonable time to avoid delays in construction. Delays in delivery of equipment or material purchased by the Contractor or its Subcontractors shall not be considered as a cause for an adjustment of the Contract Time or a basis for damages or compensation. The Contractor shall be fully responsible for the

timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials. If an item is found to be unavailable, Contractor shall notify Project Manager immediately of recommended substitute(s) to permit Project Manager's acceptance of a suitable substitute.

- 35.5 Project Manager will exercise sole authority for determining conformance of workmanship, materials, equipment and systems with the requirements of the Contract. Review and approval of all items proposed by Contractor for incorporation into the work will be by Project Manager, or his representative(s). This function by Project Manager will apply both to approvals for the Contract as initially signed, and to approvals for changes to Contract by modifications during progress of the work. Reference to manufacturers' names, brands and models is to establish the type and quality desired. Substitutions may be permitted unless specifically noted otherwise and in accordance with Technical Specifications.
- 35.6 When materials, equipment, or systems are specified by performance only, without reference to specific manufacturer's brands or models, Contractor shall submit its own choice for Project Manager's review and approval, supported by sufficient evidence of conformity with the Contract Documents.

### **GC-36 LABOR**

- 36.1 Contractor shall employ only competent and skilled personnel to perform the work. Contractor shall, if requested to do so by Project Manager, remove from the jobsite any personnel of Contractor whom Project Manager determines unfit or acting or working in violation of any provision of this contract.
- 36.2 Work assignments and the settlement of jurisdictional disputes shall conform with either the Rules, Regulations and Procedures of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry, and any successor agreement thereto, or any other mutually established method of determining work assignments and settling jurisdictional disputes.
- 36.3 Contractor shall comply with and shall cooperate with Project Manager in enforcing jobsite conditions and job work rules which directly affect the performance of the work including but not limited to starting and quitting time, smoking regulations, check-in and check-out procedures, jobsite safety regulations and security regulations, emergency plans and procedures, and daily clean-up.
- 36.4 The Contractor and subcontractors shall be bound by and comply with all Federal, State and local laws with regard to minimum wages, overtime work, hiring, and discrimination. All work necessary to be performed after regular working hours, on Sundays or legal holidays, shall be performed without additional expense to the Owner. The Contractor shall comply with the Copeland Anti-Kick Back Act (19 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR Part 3). This Act provides that each Contractor or Subcontractor shall be prohibited from inducing by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

### **GC-37 EQUAL EMPLOYMENT OPPORTUNITY**

- 37.1 The Contractor or any subcontractor shall be bound by and comply with the City of Wilton

Manors Code of Ordinances ("Code"), including Section 2-269 of which requires nondiscrimination in public contracts. The Contractor or any subcontractor shall not unlawfully discriminate (as proscribed by federal, state, county, and any other local law) against any employee, city employee working with such contractor or subcontractor, or applicant for employment with such contractor or subcontractor on the basis of the fact or perception of that person's race, color, creed, religion, national origin, ancestry, age above the age of twenty- one (21), sexual orientation, gender identification, gender, marital status, pregnancy, familial status, veterans status, political affiliation, or physical or mental disability, or association with members of classes protected under this Code or in retaliation for opposition to any practices forbidden under this Code. Discrimination on the basis of gender includes sexual harassment. The Contractor or subcontractor will take action to ensure that applicants are employed, and that employees are treated equally during employment without regard to the fact or perception of their race, color, creed, religion, national origin, ancestry, age above the age of twenty-one (21), sexual orientation, gender identification, gender, marital status, pregnancy, family status, veterans status, political affiliation, or physical or mental disability and such person's association with members of such classes. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting forth provisions of this nondiscrimination clause.

- 37.2 The Contractor will, in all solicitations or advertisements for employees placed for, by, or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, national origin, ancestry, age above the age of twenty-one (21),, sexual orientation, gender identification, gender, marital status, pregnancy, family status, veterans status, political affiliation, or physical or mental disability.
- 37.3 The Contractor will send to each labor union or representatives of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Owner, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 37.4 The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 37.5 The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Owner and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 37.6 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of

September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- 37.7 The Contractor will include the provisions of paragraphs 37.1 through 37.6 in every subcontract or purchase unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or purchase order as may be directed to the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.
- 37.8 The Contractor shall comply with all equal opportunity regulations, guidelines, and standards lawfully adopted under the governing statutes.

**GC-38 SAFETY & PROTECTION OF PERSONS & PROPERTY, RESPONSIBILITY FOR SAFETY AND HEALTH**

- 38.1 The Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-596) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54), as either may be amended from time to time. The Contractor shall allow representatives of the Department of Labor full access to the project for inspection. The Contractor certifies that all employees, officers, directors, subcontractors, or agents of Contractor shall comply with OSHA and state safety regulations and requirements.

The Contractor shall continuously maintain adequate protection of all its work from damage and shall protect all property from injury or loss arising in connection with the Contract. It shall make good any such damage, injury or loss, except such as may be directly due to errors in Contract Documents or caused by agents or employees of the Owner. It shall adequately protect adjacent property as provided by law and the Contract Documents. It shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority, or local conditions. Contractor shall provide a Maintenance Of Traffic (MOT) plan accepted by the Project Manager and drawings for the public roadways and Rights Of Way and preservation of the continuation of the area businesses, taking into full consideration all local conditions. It shall comply with the Florida Department of Commerce Safety Regulations, the "Manual on Traffic Controls and Safe Practices for Street and Highway Construction, Maintenance and Utility Operations" and any local safety regulations.

- 38.2 In case of failure on the part of the Contractor to promptly restore damaged property, or make good such damage or injury, the Owner may, after forty-eight (48) hours' notice to the Contractor, proceed to repair, rebuild or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted from any monies due or which may become due the Contractor under this Contract.

- 38.3 Surface or subsurface water or other fluid shall not be permitted to accumulate in excavations or under, over, or in the structures. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of in accordance with local, state, and federal law, rules, and regulations, by means of temporary pumps, piping, drainage lines and ditches, dams or other methods at the sole expense of the Contractor and approved by the Project Manager in writing.
- 38.4 In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the Work or its performance, the Contractor shall act immediately to prevent threatened damage, injury or loss to remedy said violation, whichever is applicable. Failure by Contractor to take necessary emergency action shall entitle the Owner to take whatever action it deems necessary including, but not limited to, suspending the Work as provided in GC- 22 OPTIONAL TERMINATION.
- 38.5 The Owner may offset any and all costs or expenses of whatever nature, including attorneys' fees, paid or incurred by the Owner in taking such emergency action against any sums then or thereafter due to the Contractor. The Contractor shall defend, indemnify and hold the Owner harmless against any and all costs or expenses pursuant to this Paragraph, by whomsoever incurred. Such indemnification shall be in accordance with the terms and conditions of GC-26 INDEMNITY as provided herein.
- 38.6 If the Contractor shall be entitled to any additional compensation or extension of time claimed as a result of emergency work which is not due to the fault or neglect of the Contractor or his Subcontractors, it shall be handled as a claim as provided in GC-46 FIELD CHANGE DIRECTIVES/CHANGE ORDERS.
- 38.7 The Contractor's personnel and those of its subcontractors shall wear reflective safety vests and hard hats at all times while working on the project site and shall exercise care in performing duties under this contract. When the cutting of materials is required, personnel shall also wear protective eyewear and hearing protection.

**GC-39 FIRE PREVENTION**

- 39.1 Contractor shall, at its expense, conform to all Federal, State, and local laws and regulations pertaining to burning, fire prevention and control within or adjacent to the project. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the Contractor. This includes keeping the Contract work area clear of all trash at all times.
- 39.2 All tarpaulins used for any purpose during construction of any work shall be made of material resistant to fire, water and weather and shall bear UL labels. Lighting of any fires on premises is strictly forbidden. Controlled burning shall be with the consent of the Owner. Contractor shall provide portable fire extinguishers properly labeled, located and compatible with the hazard of each work area and shall instruct its personnel in their use.

Wherever welding and burning are conducted, flammable materials shall be protected and a fire watch shall be provided by Contractor to be present during the burning and welding operation to ensure that protective measures are taken and that no fires result from such

operation. The fire watch shall have fire extinguisher equipment readily available and know-how for proper use.

#### **GC-40 BEST MANAGEMENT PRACTICES**

- 40.1 Contractor shall be responsible for evaluating the site before construction is initiated to determine if any site conditions may pose particular problems for the handling of any Regulated Substances. For example, handling Regulated Substances in the proximity of water bodies or wetlands may be improper.
- 40.2 Regulated Substances are substances that may cause significant harm to human health and the environment (including surface and groundwater). Contractor shall employ Best Mangrove Practices for the excavation and the storage, handling, use and production of Regulated Substances within wellfield zones that may impair present and future drinking water suppliers. If any regulated substances are stored on the construction site, they shall be stored in a location and manner which will minimize any possible risk of release to the environment. Any storage container of fifty-five (55) gallons, or 440 pounds, or more containing Regulated Substances shall have constructed below it an impervious containment system constructed of materials of sufficient thickness, density and composition that will prevent the discharge to the land, ground waters, or surface waters, of any pollutant which may emanate from said storage container or containers. Each containment system shall be able to contain 150% of the contents of all storage containers above the containment system.
- 40.3 Contractor shall familiarize itself with the manufacturer's safety data sheet supplied with each material containing a Regulated Substance and shall be familiar with procedures required to contain and clean up any releases of the Regulated Substance. Any tools or equipment necessary to accomplish same shall be available in case of a release.
- 40.4 Upon completion of construction, all unused and waste Regulated Substances and containment systems shall be removed from the construction site and shall be disposed of in a proper manner as prescribed by law.

#### **GC-41 DUST CONTROL**

- 41.1 The Contractor, for the duration of the Contract, shall, at its expense, maintain all work areas, excavations embankments, haul roads, access roads, construction sites, waste disposal areas, borrow areas, and all other work areas free from dust.

Industry-accepted methods of dust control suitable for the area involved and approved by Project Manager must be implemented.

#### **GC-42 WATER POLLUTION**

- 42.1 Contractor shall, at its expense, provide suitable facilities to prevent the introduction of any substance or materials into any stream, river, lake or other body of water that may pollute the water or constitute substances or materials deleterious to fish and wildlife.

#### **GC-43 AIR POLLUTION**

- 43.1 The Contractor shall, at its expense, so perform its work as not to discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules and regulations of all Federal, State and local air and water pollution requirements including, but not limited to: registering with the Palm Beach County Health Department, Air Pollution Board, any equipment requiring operating permits by said Board, and adhering to all Broward County Air Pollution Board Regulations.

**GC-44 TESTING**

- 44.1 Unless otherwise provided in the Contract, Drawings and Specifications, testing of materials or work shall be performed by the Contractor at its expense and in accordance with the Technical Specifications. Should tests in addition to those required by the Specifications be desired by Project Manager, Contractor will be advised in reasonable time to permit such testing. Such additional tests will be at Owner's expense unless such additional tests are required due to Contractor's work or materials having failed any initial test. In this event, such additional (re-test) tests shall be at Contractor's expense. Contractor shall furnish samples as requested and shall provide reasonable assistance and cooperation as necessary to permit tests to be performed on materials or work in place including reasonable stoppage of work during testing. Contractor shall be responsible for stand-by and other costs associated with the testing agency.

**GC-45 PROGRESS**

- 45.1 Contractor shall give Project Manager full information in advance as to its plans for performing each part of the work. If at any time during the progress of work, Contractor's actual progress is inadequate to meet the requirements of the Contract, Project Manager may so notify Contractor who shall thereupon take such steps as may be necessary to improve its progress. If within a reasonable period as determined by Project Manager, Contractor does not improve performance to meet the currently approved Contract project schedule, Owner may require an increase in Contractor's labor force, the number of shifts, overtime operations, additional days of work per week and an increase in the amount of construction equipment; all without additional cost to Owner. Neither such notice by Owner nor Owner's failure to issue such notice shall relieve Contractor of its obligation to achieve the quality of work and rate of progress required by the Contract.
- 45.2 Failure of Contractor to comply with the instructions of Project Manager may be grounds for determination by Owner that Contractor is not prosecuting its work with such diligence as will assure completion within times specified. Upon such determination, Owner may terminate Contractor's right to proceed with the performance of the Contract, or any separable part thereof, in accordance with GC-21 TERMINATION FOR DEFAULT or other provisions of this Contract.

**GC-46 FIELD CHANGE DIRECTIVE/CHANGE ORDERS**

- 46.1 The Project Manager, without invalidating the Contract, may make adjustments to bid item quantities by adding to or deducting from the quantities on the Schedule of Bid Items, as the work progresses. These adjustments are tracked and approved on the monthly Application For Payment form.
- 46.2 The Project Manager, without invalidating the Contract, may order extra work items that are not on the Schedule of Bid Items, but necessary to complete the scope of the project as bid. The direction to carry out the work, its associated value and any associated Contract Time Extension shall be

mutually agreed upon by the Project Manager, Engineer, and Contractor through a numbered Field Change Directive. These numbered Field Change Directives must be shown on the Applications for Payment as separate "line items" and tracked throughout the duration of the Project.

- 46.3 At the completion of the Project, a final Change Order shall be executed by the Project Manager, Engineer, and Contractor to reconcile the value of the contract. Should the Contractor or any of his subcontractors commence with the work without making a claim in writing for unforeseen extra work he encounters, it will be construed as an acceptance and agreement by the Contractor or subcontractor that any such work is required under the contract and no future claim for extras will be considered or allowed by the Owner.
- 46.3.1 No claim for extra work will be allowed unless and until authority for same by written Field Change Directive has been obtained from Project Manager.
- 46.3.2 Changes in the work directed in writing by the Project Manager under the preceding procedures shall become a part of the Contract by a written Field Change Directive.
- 46.3.3 Should any authorized Field Change Directive or Change Order result in an increase in the contract amount; Contractor shall furnish an amended construction bond or the equivalent thereto in accordance with Section 255.05, Florida Statutes.
- 46.4 The value of any Field Change Directive ordered under the Contract for extra work, (i.e. work for which there are contract established unit prices), shall be determined under one or more of the following procedures before a written Field Change Directive is issued:
- 46.4.1 By a lump sum or other unit prices mutually agreed upon by the Project Manager and the Contractor; or
- 46.4.2 If no such unit prices are set forth, then by a lump sum or other unit prices mutually agreed upon by the Project Manager and the Contractor; or
- 46.4.3 By cost reimbursement, which is the actual cost for labor, direct overhead, materials, supplies, equipment and other services necessary to complete the work plus fifteen (15) percent to cover the cost of general overhead and profit. For all labor and foreman in direct charge of the authorized operations, the Contractor shall receive the current local rate of wages to be agreed upon in writing before starting such work, for each hour said labor and foreman are actually engaged thereon. An upper limit of total cost and of profit shall be agreed upon and shall not be exceeded unless approved by the Project Manager.
- 46.5 The Contractor shall have an accounting system which accounts for such costs in accordance with generally accepted accounting principles. This system shall provide for the identification, accumulation and segregation of allowable and unallowable Field Change Directive costs.
- 46.6 Where it is indicated that the Contract is Federally or State assisted, the Contractor's attention is directed to the applicable rules and regulations relative to cost principles, which must be used for the determination and allowability of costs under grant.
- 46.7 In no case shall the Contractor's and/or Subcontractors' general overhead and profit in the

aggregate exceed fifteen (15) percent of the total cost of direct labor, fringe benefits, direct overhead, materials, supplies, equipment and directly related services supplied by him. Among the items considered as general overhead are bonds, insurance, incidental job burdens, supervision and general office expenses.

- 46.8 In no case shall the Contractor's cost for administering subcontracts exceed five (5) percent of the subcontractors' cost not including subcontractors' profit.
- 46.9 For special equipment and machinery such as power driven pumps, concrete mixers, trucks, and tractors, or other equipment, required for the economical performance of the authorized work, the Contractor shall receive payment based on the agreed rental price for each item of equipment and the actual time of its use on the work provided that the rental price shall not exceed the current rates published by the Equipment Guide Book Company in the Blue Book, "Rental Rates for Construction Equipment". Rate shall be daily, weekly or monthly as appropriate.
- 46.10 If Owner receives from Contractor a change order proposal or price quote ("change order proposal") for construction services requested in writing by Owner, and the change order proposal conforms to all statutory requirements and all requirements set forth in this Contract, Owner shall approve or deny the Change Order proposal and send written notice of that decision to Contractor within 35 days after receipt of such Change Order proposal. If Owner denies a Change Order proposal due to deficiencies in the Change Order proposal, Owner shall identify the Change Order proposal's deficiencies and identify the actions necessary to remedy those deficiencies. In addition to any other bases to not issue a Change Order provided for by this Contract, Owner may deny a Change Order proposal if and to the extent the Project Manager determines procuring the additional or changed work is not in the best interests of Owner.

46.11 TARIFF-RELATED COST ADJUSTMENTS

The Contractor acknowledges that all prices quoted and agreed upon herein are inclusive of any existing or anticipated tariffs, duties, taxes, or similar levies. In the event the Contractor seeks to impose additional fees due to newly imposed tariffs, such requests shall not be honored unless the Contractor provides clear and convincing documentation that:

- (a) The affected goods were procured after the implementation date of the tariff in question;
- (b) The Contractor submits official government or Customs documentation clearly evidencing the imposed tariff and the applicable tariff rate;
- (c) The Contractor provides verifiable proof (e.g., dated purchase orders, supplier invoices) showing the purchase date and country of origin of the goods; and
- (d) The Contractor certifies that a good-faith effort was made to source the same or substantially similar items from countries not subject to such tariffs, and provides documentation demonstrating such efforts.

Failure to provide adequate and verifiable documentation, as determined solely by the Owner, shall result in denial of the tariff-related fee request. This clause shall not be construed as a guarantee or acceptance of any surcharge due to tariffs unless fully compliant with the above conditions.

**GC-47 MEASUREMENT OF AND PAYMENT FOR WORK**

- 47.1 **Monthly Payments to the Contractor.** The Contractor shall plan its work for construction on the basis of twelve (12) monthly pay periods per year. So long as the work is prosecuted in compliance with the provisions of the Contract, the Contractor will, on or about the last day of the pay period, make an approximate estimate, in writing on a form approved by the Project Manager of the proportionate value of the work done, items, and locations of the work performed up to and including the last day of the period then ending. The Engineer will then review said estimate and make the necessary recommendations to the Contractor for revision. The Contractor shall revise the Application for Payment and resubmit to the Engineer for review and Certification. **Redlined Applications for Payment will not be accepted by the Project Manager.** If the Contractor and the Engineer do not agree on the approximate estimate of the proportionate value of the work done for any pay period, the determination of the Engineer shall be binding. The amount of said estimate after deducting five percent (5%) and all previous payments, shall be due and payable to the Contractor within twenty (20) days after presentation of the estimate to the Project Manager
- 47.2 Contractor shall comply with the provisions of Section 255.05, Florida statutes, if applicable.

**GC-48 PROGRESS PAYMENT PROCEDURES**

- 48.1 The Contractor will prepare and submit three (3) original monthly invoices for work completed during the one-month period. Application For Payment shall be submitted in the format of the sample form given to the Contractor at the Pre- Construction Meeting. All information must be completed for the pay application to be accepted. Owner's purchase order number for the project will be given at the Pre-Construction Meeting and will be placed at the right hand corner of each application. The Application for Payment will be reviewed by all parties in attendance at the monthly pay application meetings. Redlined Applications for Payment will not be accepted by the Project Manager. The Contractor shall bring three (3) rough draft copies to the meeting for the Project Manager and Engineer to review. Following review by the Project Manager and Engineer, Contractor shall submit three (3) original Applications for Payment to the address of the Engineer designated in the Notice to Proceed.
- 48.2 If the Application for Payment and support data are not approved, the Contractor is required to submit new, revised or missing information according to the Project Manager or Engineer's instructions. Otherwise, the Contractor shall prepare and submit to Project Manager or Engineer an invoice in accordance with the estimate as approved. Owner will pay Contractor, in accordance with Florida Prompt Payment Act, §218.735, Florida Statutes, as may be amended from time to time.
- 48.3 Each Application For Payment shall be accompanied by an updated project schedule. Any Application For Payment that is received without this item will be returned to the Contractor without review.
- 48.4 Any amount otherwise payable under the Contract may be withheld, in whole or in part if:
- 48.4.1 Claims are filed against Contractor by Owner or third parties, or if reasonable evidence indicates the probability of filing any such claim;

- 48.4.2 Contractor is in default of any Contract condition;
  - 48.4.3 There is reasonable doubt that this Contract can be completed within the time specified or for the balance then unpaid;
  - 48.4.4 Defective work or material is not remedied;
  - 48.4.5 Contractor persistently fails to carry out the work in accordance with the Contract Documents;
  - 48.4.6 Contractor fails to submit the information required by this Contract; or
  - 48.4.7 Contractor fails to submit an updated project schedule and progress photographs with each Application For Payment.
- 48.5 The Contractor shall prepare a schedule of values by phases of work to show a breakdown of the Contract Sum corresponding to the payment request breakdown and progress schedule line items. The schedule of values must also show dollar value for each unit of work scheduled. Field Change Directives shall be added as separate line items. The schedule of values shall be submitted to the Project Manager and Engineer for review and approval prior to "Commencement of Work". Mobilization/Demobilization, Bonds, Insurance, and General Requirements shall be considered a lump sum line item. Progress Payments for this line item shall be paid as a percentage of work completed according to the schedule described in Technical Specification 01200, PRICE AND PAYMENT PROCEDURES.
- 48.6 Prior to initial payment request, the Contractor shall submit the following documents to the Project Manager and Engineer for their review and approval:
- 48.6.1 List of principle subcontractors and suppliers.
  - 48.6.2 Schedule of values.
  - 48.6.3 Shop drawing log.
  - 48.6.4 Project schedule.
  - 48.6.5 Recorded copy of Notice of Commencement
  - 48.6.6 Recorded Public Construction Bond
- 48.7 Upon receipt by Engineer and Project Manager of Contractor's written Notice of Final Completion of its work under this Contract, Engineer and Project Manager shall verify all work has been completed on the project. When all work has been verified as complete, and the Contractor submits the items listed below, the Contractor may submit a final Application For Payment:
- 48.7.1 Complete work listed as incomplete at the time of Substantial Completion and obtain

Engineer certification of completed Work.

48.7.2 Provide copy of records indicating notification to all subcontractors and material suppliers of Contractor's Public Construction Bond.

48.7.3 Transfer operational, access, security and similar provisions to Owner; remove temporary facilities, tools and similar items.

48.7.4 Completion of requirements specified in GC-50 SUBSTANTIAL COMPLETION AND GC-51 FINAL INSPECTION, TESTING AND ACCEPTANCE.

48.7.5 Obtain certification of as-built (record) drawings from Engineer.

#### **GC-49 USE OF COMPLETED PORTIONS OF WORK**

49.1 The Owner may occupy or use any completed or partially completed portion of the work at any time, provided the Engineer has certified that the Owner and Contractor have accepted in writing the responsibilities assigned for maintenance security, utilities, damage to the work and insurance, and have agreed in writing concerning the period for correction of the work and for the commencement of the warranties as set for in the Contract documents. Open issues regarding payment and retainage with respect to the work shall not bar Owner's right to occupancy pursuant to this Section.

#### **GC-50 SUBSTANTIAL COMPLETION**

50.1 The date of Substantial Completion is the date established by the Owner at the time of issuing the Notice To Proceed. Substantial Completion is defined as that point that the Work is sufficiently complete to permit the Owner to use it for its intended purpose. The decision as to whether a project has reached Substantial Completion is the sole judgment of the Project Manager.

50.2 The Contractor shall notify the Project Manager in writing when the Contractor considers the project Substantially Complete. The Contractor shall attach a comprehensive "punch list" of outstanding or incomplete work and items needing correction with dates indicating when the items listed will be completed.

50.3 Once the Project Manager has received notice from the Contractor, the Engineer and Project Manager, along with the Contractor will perform a Substantial Completion inspection of the work. The Project Manager and the Engineer, may refuse to complete the Substantial Completion inspection of the Work if the Work is obviously not substantially complete or when the Contractor's "punch list" is incomplete.

50.4 As a condition preceding the Contractor's request for Substantial Completion walkthrough, the following shall be completed:

The project site shall be cleared of the Contractor's excess materials, equipment, storage shacks, trailers, and/or building supplies. All temporary construction shall be removed. All pre-existing irrigation has been reconstructed/reconnected and operating, all seed, mulch and sod (including soil supplements and fertilizer) are installed and developing a healthy stand of

vegetation, all plants and shrubs that were disturbed by the construction are restored or replaced, all mail boxes are set in the correct location at the correct height and setback, all roadways have been properly patched and all asphalt overlay operations (including stripping and signage) are complete.

- 50.5 If Substantial Completion is obtained at the inspection, the Engineer shall prepare and issue the Certification of Substantial Completion.
- 50.6 If Substantial Completion is not obtained at the inspection, called by the Contractor, for reasons that are the fault of the Contractor, the cost of any subsequent inspections requested by the Contractor for the purpose of determining Substantial Completion shall be the responsibility of the Contractor and shall be assessed against the final Application For Payment.
- 50.7 Punch list items recorded as a result of inspections for Substantial Completion are to be corrected by the Contractor within thirty (30) calendar days and prior to any request for Final Inspection, Testing and Acceptance. If the Substantial Completion punch list items have not been corrected by the Contractor within the thirty (30) calendar day period, at the discretion of the Project Manager, Liquidated Damages, as described in the Contract, Section 6 LIQUIDATED DAMAGES may be applied.
- 50.8 Within 20 business days after the list is created, the Owner must pay the Contractor the remaining contract balance that includes all retainage previously withheld by the OWNER less an amount equal to 150 percent of the estimated cost to complete the items on the punch list.

**GC-51 FINAL INSPECTION, TESTING, AND ACCEPTANCE**

- 51.1 When the Contractor considers that all work under the Contract is complete as previously referenced in GC-50 SUBSTANTIAL COMPLETION, Contractor shall so inform Project Manager and Engineer in writing. In addition, when items on the punch list as recorded at the Substantial Completion inspection have been corrected, and all “system” or equipment functional testing has been completed and accepted by the Project Manager and the Project Manager is satisfied that all work under the Contract is completed and is in accordance with the requirements of this Contract, Project Manager shall issue the Certificate of Final Acceptance to Contractor for work under this Contract.
- 51.2 After receipt of a Final Application For Payment, as Certified by the Engineer, the Owner will make final payment to the Contractor of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including the following items, for which a Change Order will be issued:
  - 51.2.1 Liquidated Damages, as applicable.
  - 51.2.2 At the discretion of the Owner, 150% times the value of outstanding items, corrective Work, or “punch list” items indicated on the Certificate of Substantial Completion, “final punch list”, or any other “punch list” as being yet uncompleted or uncorrected, as applicable.

All such Work shall be completed or corrected to the satisfaction of the Owner within the time stated on the Certificate of Substantial Completion, or on the "final punch list", or any other "punch list", otherwise the Contractor does hereby waive any and all claims to all monies withheld by the Owner to cover the value of all such uncompleted or uncorrected items.

51.2.3 In making the final Adjustment of Accounts, the Contractor shall:

51.2.3.1 Submit a final statement of accounting to the Engineer

51.2.3.2 Statement shall reflect all adjustments to the Contract Sum:

51.2.3.2.1 The original Contract Sum

51.2.3.2.2 Additions and deductions resulting from:

i. Previous Change Orders

ii. Unit Prices

iii. Deductions for uncorrected work

iv. Penalties and bonuses

v. Deductions for re-inspection payments

vi. Other adjustments

51.2.3.2.3 Total Contract Sum, as adjusted

51.2.3.2.4 Previous payments

51.2.3.2.5 Sum remaining due

51.2.3.3 The Project Manager will prepare a final Change Order, reflecting approved adjustments to the Contract Sum that were not previously made by Change Orders.

51.3 Contractor shall guarantee all work and materials for a period of five years or 1500 hours, whichever occurs first from the date of system start up, as set forth in GC-24, WARRANTY. Warranty period shall commence with the date of final acceptance. This warranty shall survive the expiration of the Contract.

51.4 Neither final acceptance of the Work, nor payment therefore, nor any provision of the Contract Documents shall relieve the Contractor of responsibility of correction of defective or deficient materials or work. If, within one (1) year, or as provided for elsewhere in the General Conditions for Construction or Technical Specifications, after Final Inspection, Testing and Acceptance any of the work is found to be defective, deficient or not in accordance with the Contract Documents, the Contractor shall rectify, remove and replace it promptly after receipt of a written notice from the Owner and correct and pay for any damage to other work as a result thereof.