

# DRAFT AIA® Document A201® - 2017

## **Modified General Conditions of the Contract for Construction**

### **for the following PROJECT:**

Construction of Village Hall/Public Safety Complex and Miami-Dade County Fire Station No. 27

### **THE VILLAGE:**

North Bay Village  
1666 Kennedy Causeway, 3<sup>rd</sup> Floor  
North Bay Village, FL 33141

### **THE A/E PROFESSIONALS:**

Wannemacher Jensen Architects, Inc.  
815 NW 57th Avenue, Suite 219  
Miami, FL 33126

### **VILLAGE'S OWNER'S REPRESENTATIVE**

Steven P Buckland  
Public Works Director, North Bay Village

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, *Guide for Supplementary Conditions*.



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## ARTICLE 1 GENERAL PROVISIONS

### §1.1 Basic Definitions

#### §1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between North Bay Village (hereinafter, the “Village” or the “Owner”) and the [INSERT NAME OF CONTRACTOR] (hereinafter, the “Contractor”) and consist of the Contract, Exhibits to the Agreement, Modified General Conditions, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract (hereinafter, the “Agreement” or “Contract”). A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written Field Directive for a minor change in the Work issued by the Architect or Village. The Contract Documents also include Request for Qualifications No. 2025-006 and Request for Proposals No. 2025-006-01 (collectively, the “Competitive Solicitation”) issued by Village, with specific emphasis on the Drawings, attached as Exhibit “A” to this Agreement, and the Specifications, attached as Exhibit “B” to this Agreement, sample forms, other information furnished by the Village in anticipation of receiving bids or proposals. Any of the Contract Documents not attached hereto are hereby incorporated by reference and shall be deemed to be of the same force and effect as if attached hereto.

#### §1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the A/E Professionals or the A/E Professionals’ consultants, (2) between the Village and a Subcontractor or a Sub-subcontractor, (3) between the Village and the A/E Professionals or the A/E Professionals’ consultants, or (4) between any persons or entities other than the Village and the Contractor, it being specifically understood and agreed that none of the Contractor’s Subcontractors, Sub-subcontractors, materialmen and equipment suppliers shall be deemed to be a third-party beneficiary of this Contract. The A/E Professionals shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the A/E Professionals’ duties.

#### §1.1.3 The Work

The term “Work” means the construction and services required by the Contract Documents, especially the Drawings and the Specifications attached to this Agreement as Exhibits “A” and “B,” respectively, whether completed or partially completed, and includes all Work that is reasonably inferable therefrom as being necessary to accomplish the intent of the Contract Documents and fully functioning systems and a fully functioning Project, all in accordance with and as required by all applicable federal, state and local building codes, laws, ordinances, rules and regulations. The Work includes all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

#### §1.1.4 The Project

The Project is the construction of the North Bay Village Hall/Public Safety Complex and Miami-Dade County Fire Station No. 27, which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Village through Separate Contractors.

#### §1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents attached hereto as Exhibit “A” showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### §1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. Exhibit “B” to this Agreement includes Specifications for the Project.

#### §1.1.7 Instruments of Service

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

### **§1.1.8 Initial Decision Maker**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Village or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### **§1.1.9 Knowledge**

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents as used in reference to the Contractor shall be interpreted to mean that which the Contractor reasonably knows, reasonably recognizes, and reasonably discovers or should discover in exercising the reasonable care, skill, and diligence required by the Contract Documents in their capacity as a Contractor. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the reasonable care, skill, and diligence required of the Contractor by the Contract Documents.

**§1.1.10** Words such as "provide," "furnish," "furnish and install," "supply," "include," and similar terms shall, unless otherwise noted, be directions to Contractor to provide and pay for all labor, materials and services necessary for the proper execution and completion of the relevant Contractor's Work. The term "any" shall be interpreted as any and all whenever more than one item would be applicable for completion of the Work in accordance with the Contract Documents.

**§1.1.11** The following additional definitions shall apply herein:

**§1.1.11.1** "Approved": When used to convey actions of the A/E Professionals on Contractor's submittals, applications, and requests, "approved" is limited to the A/E Professionals' duties and responsibilities as stated herein.

**§1.1.11.2** "Directed": A command or instruction by the A/E Professionals. Other terms including "requested," "ordered," "authorized," "selected," "required," and "permitted" have the same meaning as "directed."

**§1.1.11.3** "Indicated": Requirements expressed by graphic representations or in written form on Drawings, in Specifications, and in other Contract Documents. Other terms including "shown," "noted," "scheduled," and "specified" have the same meaning as "indicated."

**§1.1.11.4** "Regulations": Laws, ordinances, statutes, and lawful orders issued by authorities having jurisdiction, and rules, conventions, and agreements within the construction industry that control performance of the Work.

**§1.1.11.5** "Project Site": Space available for performing construction activities. The extent of Project site is shown on Drawings and may or may not be identical with the description of the land on which Project is to be built.

**§1.1.11.6** "Elevation": The figures given on the Drawings or in the other Contract Documents after the word "elevation" or abbreviation of it shall mean the distance in feet above the datum adopted by the A/E Professionals.

## **§1.2 Correlation and Intent of the Contract Documents**

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

**§1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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

**§1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. In case of discrepancy between the Drawings and/or Specifications, or inconsistencies within or between parts of the Contract Documents, the Contractor shall (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement; either or both in accordance with the A/E Professionals' interpretation. On the Drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small scale drawings. Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. The Contractor must call any such conflict or discrepancy between the Contract Documents and/or between the Contract Documents and applicable standards, codes and ordinances and/or between the Contract Documents and the existing Project it discovers to the Village's attention, in writing, prior to proceeding with the Work. Contractor must verify all grades, elevations, dimensions, locations and quantities indicated on the Contract Drawings prior to the performance of Work. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, locations and quantities. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all grades, elevations, dimensions, locations and quantities relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, locations and quantities shall be promptly rectified by the Contractor without any additional cost to the Village. Any differences found shall be submitted to the A/E Professionals and the Owner's Representative for resolution before proceeding with the Work and in such time so as not to delay the progress of the Work. Whenever a product to be furnished by Contractor requires it to be in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification or other Association Standard, including the requirement of compliance with any local certifications for products such as a Notice of Acceptance approving the product, the Contractor shall present an affidavit from the manufacturer when provided by the manufacturer and, when requested by the A/E Professionals, the Owner's Representative, or Village or as set forth in the Specifications certifying that the product complies with the particular Standard or Specification. When provided by the manufacturer and requested by the A/E Professionals, the Owner's Representative, or Village the specified support test data shall be submitted to substantiate compliance.

### **§1.3 Capitalization**

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

### **§1.4 Interpretation**

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

**§1.4.2** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Claims for additional costs or extensions of time because of the failure of Contractor to familiarize itself with conditions at the Project site will not be allowed. The Contractor shall evaluate and satisfy itself as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project and surrounding areas; (2) any limitations as to access associated with the Project; (3) anticipated labor supply and costs; (4) availability and cost of materials, tools and equipment; and (5) other similar issues. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Village shall not be required to make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Contractor to comply with the requirements of this Article.

### **§1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

**§1.5.1** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Drawings provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Drawings. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Drawings

on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Village.

**§1.5.2** Contractor shall maintain at the Project Site, and shall make available to Village and A/E Professionals, one record copy of the Drawings marked to indicate any deviations from the Contract Documents (the “As-Built Drawings”) in good order. The As-Built Drawings shall be prepared and updated during the prosecution of the Work. The prints for As-Built Drawing use will be a set of black-line prints provided by A/E Professionals to Contractor at the start of construction. Contractor shall maintain said set in good condition and shall use colored pencils to mark-up said set with “as-built information” in a legible manner to show: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings and stub-outs; and (v) such other information as either Village, the Owner’s Representative, or A/E Professionals may reasonably request. At the completion of the Work, Contractor shall deliver all As-Built Drawings to Village. Final payment and any retention shall not be due and owing to Contractor until the final As-Built Drawings required above are delivered to Village.

## **§1.6 Notice**

**§1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§1.6.2** Notice of Claims as provided in Article 15 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

## **§1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

## **§1.8 Building Information Models Use and Reliance**

To the extent applicable, any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party’s sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 VILLAGE**

### **§2.1 General**

**§2.1.1** The Village is the identified in the Agreement as the Owner of the Property where the Project will be constructed and is referred to throughout the Contract Documents as if singular in number. The Village shall designate in writing a representative who shall have express authority to bind the Village with respect to all matters requiring the Village’s approval or authorization. Except as otherwise provided in Article 4, the Owner’s Representative and A/E Professionals do not have such authority. The term “Village” means the Village or the Village’s authorized representative.

**§2.1.2** Village shall provide Contractor with a copy of the Notice of Commencement, as required by Florida law, that it will file for the Project.

### **§2.2 Information and Services Required of the Village**

**§2.2.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, the Village shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Fees for temporary certificates of occupancy shall be paid by Contractor and are included in the Contract Sum.

**§2.2.2** The Village has retained an A/E Professionals lawfully licensed to practice engineering, or an entity lawfully practicing engineering, in the jurisdiction where the Project is located. That person or entity is identified as the A/E Professionals in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§2.2.3** If the employment of the A/E Professionals terminates, the Village shall employ a successor whose status under the Contract Documents shall be that of the A/E Professionals.

**§2.2.4** The Village shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor may not rely on the accuracy of any information furnished by the Village regarding the location of any utilities or the conditions of the property. Contractor acknowledges that it has investigated the location of utilities and any other site-specific issues in its pre-construction investigation and bidding for the Project.

**§2.2.5** The Village shall furnish information or services required of the Village by the Contract Documents with reasonable promptness. The Village shall also furnish any other information or services under the Village's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§2.2.6** Unless otherwise provided in the Contract Documents, the Village shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions.

### **§2.3 Village's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Village may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Village to stop the Work shall not give rise to a duty on the part of the Village to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### **§2.4 Village's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten (10) day period after receipt of notice from the Village to commence and continue correction of such default or neglect with diligence and promptness, the Village may, without prejudice to other rights and remedies the Village may have, correct such default or neglect. The Owner's Representative may, pursuant to the Contract Documents withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Village for the reasonable cost of correcting such deficiencies, including Village's expenses and compensation for the additional services by the A/E Professionals and/or the Owner's Representative made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Village. If the Contractor disagrees with the actions of the Village or the Owner's Representative, or the amounts claimed as costs to the Village, the Contractor may file a Claim pursuant to Article 15.

## **ARTICLE 3 CONTRACTOR**

### **§3.1 General**

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

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

**§3.1.3** Contractor represents that it is a properly qualified and licensed Contractor in good standing with the jurisdiction within which the Project is located. Prior to commencement of the Work, Contractor shall provide the Village with copies of the above current licenses. Contractor further represents that it has read, examined and understands the pertinent Contract Documents and that it is qualified and able to perform this Work; that it has a sufficient number of qualified personnel to assure timely performance of this Work; that it has the proper tools and equipment to perform this Work; and that it is financially capable of fully performing the Work under this Contract.

**§3.1.4** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the A/E Professionals or Owner's Representative in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### **§3.2 Review of Contract Documents and Field Conditions by Contractor**

**§3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The exactness of grades, elevations, dimensions, conditions, locations and quantities given on any of the Contract Documents, issued by the A/E Professionals, Owner's Representative, Village or the work installed by other contractors (if any), or utilities are not guaranteed by the A/E Professionals, Owner's Representative, or Village, and no extra compensation will be allowed on account of differences between actual grades, elevations, dimensions, conditions locations and quantities and grades, elevations, dimensions, locations and quantities indicated on the Contract Documents.

**§3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Village pursuant to Article 2, with specific emphasis on the information contained in the Specifications, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly, but in no event later than 48 hours, report to the A/E Professionals, Owner's Representative, and Village any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the A/E Professionals or Owner's Representative may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design or engineering professional, unless otherwise specifically provided in the Contract Documents.

**§3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly, but in no event later than 48 hours, report to the A/E Professionals, Owner's Representative, and Village any nonconformity discovered by or made known to the Contractor as a request for information in such form as the A/E Professionals or Owner's Representative may require. The Contractor shall be liable for damage, loss or expense to the Village, including, without limitation, delays and the cost of correcting defective construction, resulting from the Contractor's performing any construction activity which it knows or should know involves such errors, inconsistency, omission or variation.

**§3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the A/E Professionals or Owner's Representative issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall not be entitled to any increase in Contract Price or Contract Time and shall pay such costs and damages to the Village, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations.

**§3.2.5** The Contractor represents and warrants that the construction means, methods, procedures and techniques necessary to perform the Work will be consistent with and conform to: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) applicable, laws, codes, orders and ordinances which bear upon the Contractor's performance of the Work.

**§3.2.6** The Contractor shall coordinate and provide the project schedules in a manner to complete the Project in accordance with the requirements set forth in Section 3.10. The Contractor shall be responsible for the timely and proper finish of the Work and shall not commence any part of it until substrates and surfaces are in proper condition to receive specified portions of the Work.

### **§3.3 Supervision and Construction Procedures**

**§3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give

specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Village, Owner's Representative, and A/E Professionals, and shall propose alternative means, methods, techniques, sequences, or procedures. The A/E Professionals or Owner's Representative shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the A/E Professionals or Owner's Representative objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

**§3.3.4** Contractor has the responsibility to ensure that all material and equipment suppliers, manufacturers, and Subcontractors, and their respective agents and employees adhere to the requirements of the Contract Documents, and that they order and provide all materials, equipment and supplies in a timely manner. Contractor shall coordinate its Work with that of all others under its control or Village's control working on or supplying the Project. Contractor shall be responsible for coordination, locations, and routing of all material and equipment as designed by the Village, A/E Professionals, Engineers, and other consultants of the Village. In areas and locations where the proper and most effective location and routing cannot be made as indicated or coordinated, Contractor shall contact Village, Owner's Representative, and A/E Professionals in writing and meet with all others involved before proceeding with installations, to plan the most effective and efficient method of overall installation. Contractor shall pay all monthly utilities charges for construction until Substantial Completion.

**§3.3.5 Contractor's Compliance with Contract Documents.**

The Contractor shall give all notices, and warrants and represents that the Work when completed will be constructed in compliance with the Contract Documents and all applicable federal, state and local laws, codes, regulations, permits, decisions, orders, professional licenses, ordinances, and other legal requirements of the authorities have jurisdiction over the Project. Contractor shall bear responsibility for and bear all costs necessary to insure full compliance with the Contract Documents and all applicable laws, codes and ordinances, including the cost of removing existing Work, the cost of replacing any Work with Work conforming to the applicable requirements and any attorney's fees or other expenses incurred by Village in responding to any complaints, citations, court orders, administrative orders or similar governmental edicts or process. The provisions of this Section shall survive the completion and final payment or termination of this Contract.

**§3.4 Labor and Materials**

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

**§3.4.2** Except in the case of minor changes in the Work approved by the A/E Professionals in accordance with the Contract Documents or ordered by the A/E Professionals in accordance with Article 7, the Contractor may make substitutions only with the written consent of the Village and subject to the requirements of Section 7.4, after evaluation by the A/E Professionals and in accordance with a Change Order or Construction Change Directive.

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

**§3.5 Warranty**

**§3.5.1** The Contractor warrants to the Village that the Work and materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from

defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the A/E Professionals or Owner's Representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§3.5.2** Contractor represents and warrants to Village that all labor, materials and/or services furnished, and all Work performed by the Contractor, will be free of defects for a period of three (3) years, unless otherwise provided herein for a longer period, from the date of Final Completion. These warranties are not in lieu of, but are in addition to, any other warranties, express or implied, which may be provided by law and by manufacturers, Subcontractors, and suppliers. Contractor shall provide to Village all original warranties and guarantees from all Subcontractors, suppliers, manufacturers of equipment and materials installed in connection with the Project, together with any other warranties and guarantees required by the Contract Documents.

**§3.5.3** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Village, or shall be transferable to the Village, and shall commence in accordance with Article 9.

**§3.5.4 Warranty Forms.**

The Contractor shall obtain warranties, for a minimum period of five (5) years, from all subcontractors, which shall be attached and incorporated as part of Exhibit "I" to the Agreement. Contractor agrees that it shall at no additional cost to Village, secure Extended Warranties for all items having Extended Warranties from the applicable subcontractors, or equipment or material manufacturers, as set forth in the Exhibits to Agreement. Any warranties obtained by the Contractor which deviate from the forms attached hereto must be approved by Village.

**§3.5.5** Contractor shall provide to the Village three (3) bound hard-cover books and one (1) electronic copy of same containing the following information:

- .1 All Subcontractor warranties fully executed in the form approved by the Village;
- .2 All Extended Warranties required by the Contract Documents;
- .3 The Contractor's warranty;
- .4 A list of all Subcontractors, Sub-subcontractors and suppliers who performed work on the Project or who furnished materials for use in the Project, such list to include the name, address, telephone number and responsible person at all such entities;

The delivery, endorsement or assignment of such warranties shall not release the Contractor from obligations pursuant to the Contract Documents.

**§3.5.6** If the Contractor fails to commence to correct defective or nonconforming Work within three (3) business days from written notice to Contractor, the Village may correct such defective or nonconforming Work. If the Contractor commences to correct such defective or nonconforming Work but fails to diligently and continuously work on such correction, the Village may upon an additional three (3) business days' notice to Contractor, correct such item at Contractor's sole cost and expense. Village may deduct such costs from any monies due Contractor. If the defective or nonconforming Work is discovered after final payment, then Contractor shall pay such cost and expense, including attorney's fees incurred. The Contractor shall bear all costs of correcting such defective Work.

**§3.5.7** The warranty obligations of this Article shall survive completion and final payment or termination of this Contract for the Work performed to the date of termination.

**§3.5.8** In the case of an emergency, Contractor, within twenty four (24) hours of written notice by Village, Owner's Representative, and/or A/E Professionals, shall diligently and continuously pursue any necessary repairs or replacements of defects until corrected and will restore the Work to the condition required by the Contract Documents and Section 3.5.1. Contractor shall restore surface, subsurface, collateral and primary conditions disturbed during warranty work to their prior condition. Contractor agrees that if Contractor fails to diligently pursue correction of any deficiency in a continuous and expeditious manner until completion, Village may, in its sole discretion, correct such deficiencies at Contractor's sole and exclusive expense and that such action shall not invalidate any conditions of the

Contract Documents. Contractor shall indemnify and hold Village harmless from any claims, loss, damage or expense due to defects in the Work.

**§3.5.9** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Village or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents without reimbursement from the Village.

**§3.5.10** If the Village prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Village may do so in writing instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

**§3.5.11** Prior to Substantial Completion, Contractor shall obtain all required inspections or other required documentation by the suppliers and Manufacturers' representatives for equipment and supplies during the course of performing the Work and during the warranty period, in order to ensure that all Manufacturer warranties will be honored thorough out the Manufacturer's entire warranty period.

### **§3.6 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **§3.7 Permits, Fees, Notices and Compliance with Laws**

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

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

**§3.7.3** If the Contractor performs Work it knew or should have known, as a reasonably prudent contractor to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume responsibility for such Work and shall bear the costs attributable to correction.

### **§3.7.4 Investigation of Site**

Prior to the execution of this Agreement, Contractor has performed pre-bid investigations and services of the current Project and conditions. Contractor represents and warrants that its investigation of the site and existing conditions was performed in detail and was sufficient to disclose the condition of the Project Site and all improvements thereon, and the conditions under which the Work is to be performed, including without limitation (i) the location, condition, layout, and nature of the Project Site and surrounding areas, (ii) anticipated labor supply and costs, (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues pertinent to the performance of the Work. By execution of this Contract Contractor warrants that Contractor is familiar with and has taken into account local conditions and all reasonably anticipated things that will have a bearing on performance of Contractor's Work and Contractor's costs, including but not limited to traffic maintenance, disposal, handling and storage of the materials, access and restrictions to the site, the conditions of the character of the Work. Failure on the part of Contractor to properly evaluate any factors of costs prior to signing this Contract shall not form a basis for additional compensation. Execution of this Contract shall be conclusive evidence that Contractor has investigated and is satisfied as to the site conditions to be encountered.

**§3.7.5** Village shall not be required to make any adjustment in either the Contract Sum or Contract Time if Contractor fails to comply with the requirements of this Article.

**§3.7.6** Village assumes no responsibility or liability for the physical condition or safety at the Project Site or of any improvements thereon during construction. Contractor shall be solely responsible for providing a safe place for the performance of the Work.

### **§3.8 Allowances**

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

**§3.8.2** Unless otherwise provided in the Contract Documents,

- .1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3** whenever costs are more than or less than allowances or if they are deleted, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2. Where there is a savings on a deletion of any allowance, Village shall receive a proportionate credit of Ten Percent (10%) for Contractor's overhead and profit.

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

### **§3.9 Superintendent**

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

**§3.9.2** Contractor shall assign to the Project team the key employees ("Key Employees") including without limitation engineers, a superintendent, and a project manager, a list of which is attached as **Exhibit "G"** to the Agreement, who shall not be replaced without the Village's prior written consent, which shall not be unreasonably withheld. Unauthorized replacement of the Key Employees by the Contractor may be deemed to be a material breach of this Agreement. If it is necessary to replace the Key Employee(s), the Contractor shall so advise the Village in writing and the replacement individual shall likewise be subject to the Village's approval. The Village may reply within fourteen (14) calendar days of receipt of the information, the Owner's Representative may notify the Contractor, stating whether the Village or the Owner's Representative (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Village to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

### **§3.10 Contractor's Construction and Submittal Schedules**

**§3.10.1** Contractor's construction schedule for the Work is attached as **Exhibit "G"** to the Agreement. The schedule shall comply with the Construction Schedule and contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals, which shall be no less than once per month.

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

**§3.10.3** The Contractor shall perform the Work in strict accordance with the original schedules submitted to the Village and A/E Professionals and attached to the Agreement as **Exhibit “G,”** unless a revision to the schedule is approved in writing by the Village.

**§3.10.4** The original construction schedule and all subsequently submitted updated construction schedules shall be in a detailed precedence-style, resource loaded critical path method (CPM) type format satisfactory to the Village and the A/E Professionals which shall also: (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as “Milestone Dates”). Contractor shall provide Village will the original/planned, resource loaded schedule electronic files in P6 native electronic files (.xer format). Upon review and acceptance by the Village and the A/E Professionals of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement as **Exhibit “G”** to be incorporated in the Contract Documents. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Village of any delays or potential delays. The accepted construction schedule shall be updated one time each month to reflect actual conditions and Contractor shall provide Village with a copy of the updated resource loaded schedule, the electronic files in P6 native electronic files (.xer format), and a list of all changes made to the schedule, at the time Contractor submits its monthly Payment Application. In the event any progress report or schedule update indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including resequencing of the Work, overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, Milestone Dates, or the Contract Sum unless any such adjustment is agreed to by the Village and authorized pursuant to properly executed written Change Order. Contractor shall maintain such progress schedule on a current basis in accordance with the provisions of this Section and shall keep proper records available to inspection by Village to substantiate actual activity, duration and completion dates.

**§3.10.5** In the event the Village, Owner’s Representative, or A/E Professionals determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Village shall have the right to order the Contractor, in writing, to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, (3) re-sequencing the Work to avoid the effects of the potential delay; and (4) other similar measures utilizing the most cost effective and reasonable acceleration methods possible to avoid delays and liquidated damages (hereinafter referred to collectively as “Extraordinary Measures”). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents and approved construction schedule. The Village’s right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor’s compliance with the construction schedule. The Contractor shall be responsible for liquidated damages for delays for failure to meet the construction schedule and to complete the Work within the Contract Time. All Extraordinary Measures required to keep the Project on schedule and to avoid delays shall be a Cost of the Work but shall not be a basis to increase the Contract Sum. Should Contractor fail to perform the Extraordinary Measures as provided herein the Village shall give the Contractor a three (3) business day notice of default. If the Contractor does not commence and continue to correct the default as provided in this Section, then the Village may supplement Contractor’s crews, supply additional manpower, equipment and facilities, and/or other similar measures to avoid delays. Contractor shall be liable to Village for all costs incurred by Village pursuant to this Section. If Contractor does not perform its obligations pursuant to this Section, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost incurred pursuant to this Section. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Village.

**§3.10.6** All time limits and obligations are of the essence in the Contract Documents.

**§3.10.7** The Village may exercise the rights furnished the Village under or pursuant to this Section as frequently as the Village deems necessary to ensure that the Contractor’s performance of the Work will comply with any Milestone Date and/or the Substantial Completion Date set forth in the Contract Documents. Alternatively, Village may exercise termination rights as provided for in the Contract Documents.

### **§3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the A/E Professionals, Owner's Representative, and Village, and delivered to the Village upon completion of the Work as a record of the Work as constructed.

### **§3.12 Shop Drawings, Product Data and Samples**

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

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

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

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

**§3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the A/E Professionals, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the A/E Professionals or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Village or of Separate Contractors.

**§3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Village and A/E Professionals that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

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

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

**§3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for

construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§3.12.10.1** If professional design or engineering services or certifications by a design or engineering professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Village and the A/E Professionals will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design or engineering professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the A/E Professionals. The Village and the A/E Professionals shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design or engineering professionals, provided the Village and A/E Professionals have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the A/E Professionals will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§3.12.10.2** If the Contract Documents require the Contractor's design or engineering professional to certify that the Work has been performed in accordance with the design or engineering criteria, the Contractor shall furnish such certifications to the A/E Professionals at the time and in the form specified by the A/E Professionals.

### **§3.13 Use of Site**

**§3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. If the Work requires the use of sidewalks, public ways or other areas outside of the Village's Project site, the Contractor shall be responsible for obtaining all necessary approvals for such work, and Contractor shall pay for and obtain all necessary permits, including but not limited to road closure permits. The Contractor shall also arrange and pay for all local police and fire officers and personnel required to be present at or adjacent to the Project site in connection with the work. The Contractor must secure all materials and equipment that are stored on the Project site and shall take all safety precautions necessary to protect such materials and equipment. The Contractor shall be responsible, as a Cost of the Work included as part of the Contract Sum, for all measures to protect the Project site and property adjacent to the Project, from the Contractor's Work. The Contractor shall be responsible for all damages and costs for failure to comply with this Section 3.13.

**§3.13.2** Except for the Contractor, no other entity for whom the Contractor is responsible, including all of its Subcontractors, and any other entity performing work for the Contractor shall erect any sign on the Project site without the prior written consent of the Village.

**§3.13.3** Contractor represents that it is familiar with the community in which the Project is being constructed. Contractor has included all adequate security measures to protect the site from theft and vandalism in the Contract Sum and Village shall not be responsible for any additional security costs.

### **§3.14 Cutting, Coring, and Patching**

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

**§3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Village or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Village or a Separate Contractor except with written consent of the Village and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Village or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### **§3.15 Cleaning Up and Repair**

**§3.15.1** The Contractor shall at all times keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract Documents. At completion of the Work, the Contractor shall, at its sole cost and expense, remove all waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials, from and about the Project.

**§3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Village may do so and the Village shall be entitled to reimbursement from the Contractor or Village may deduct the cost of cleanup from any amounts due Contractor.

**§3.15.3** Contractor agrees to immediately repair at its sole cost and expense all damages to the Property, including, but not limited to, any damages to real or personal property arising from or relating to Contractor's performance of the Work to the reasonable satisfaction of the Village.

### **§3.16 Access to Work**

The Contractor shall provide the Village, Owner's Representative, and A/E Professionals with access to the Work in preparation and progress wherever located.

### **§3.17 Royalties, Patents and Copyrights**

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

### **§3.18 Indemnification**

**§3.18.1** To the fullest extent permitted by law, the Contractor (the "Indemnitor") shall indemnify and hold harmless the Village, its officers and employees, from and against claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees (at the trial and appellate levels and including fees incurred for litigating the amount of fees to be awarded), arising out of or resulting from, but only to the extent caused by, the negligence, recklessness, or intentional wrongful misconduct performance or non-performance of the Work, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§3.18.1.1** Indemnitor shall further indemnify and hold harmless the Owner's Representative, A/E Professionals, and A/E Professionals' consultants and Miami-Dade County, their officers and employees (which collectively with the Village, its officers and employees constitute the "Indemnified Parties") from and against claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees (at the trial and appellate levels and including fees incurred for litigating the amount of fees to be awarded), arising out of or resulting from, but only to the extent caused by, the negligence, recklessness, or intentional wrongful misconduct performance or non-performance of the Work, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder.

**§3.18.1.2** Indemnitor shall, at its sole cost and expense, defend the Indemnified Parties against any and all claims, demands, causes of action, suits, proceedings, damages, losses, liabilities, costs, and expenses arising out of or relating to matters for which indemnification is owed under this Contract. Counsel retained by the Indemnitor to fulfill its defense obligations shall be subject to the prior written approval of the party to be indemnified, which approval shall not be unreasonably withheld, conditioned, or delayed.

If the party to be indemnified reasonably objects to the counsel proposed by the Indemnitor, the Indemnitor shall promptly retain substitute counsel reasonably acceptable to the party to be indemnified. If the Indemnitor fails to timely undertake the defense of the Indemnified Parties by retaining counsel acceptable to the party to be indemnified in accordance with this provision, said indemnitee may retain counsel of its choosing to defend the matter. Where the objection to proposed counsel is not unreasonable, the Indemnitor's failure to timely provide an acceptable defense shall constitute a waiver of any objection to the reasonableness of the rates charged by counsel retained by the party

to be indemnified, and the Indemnitor shall be deemed to have accepted such rates for purposes of its reimbursement and indemnity obligations.

**§3.18.2** In any and all claims against the Indemnified Parties by any employee of the Contractor, or anyone for whose acts any of them may be liable, the indemnification obligation under this provision of this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or on behalf of the Contractor or any Subcontractor under Workers Compensation Acts, Disability Benefit Acts, the Fair Labor Standards, Act, Title VII of the Civil Rights Act of 1964, Age Discrimination Employment Act, Americans with Disabilities Act, or any other federal or state employee benefit acts.

**§3.18.3** The Parties hereto acknowledge and agree that, to the extent any portion of the indemnification provisions contained herein is deemed void or unenforceable in any action or proceeding, then such portion shall be considered severed such that it will not affect the remaining portions of these indemnification provisions.

**§3.18.4** The Indemnitor's indemnity obligations under this Section shall also specifically include, without limitation, all claims, fines, penalties, damages, liability, costs, fees, expenses (including, without limitation, reasonable attorneys' fees and expenses), and punitive and consequential damages (if any) arising out of, or in connection with or attributable to, any claims made against the Indemnified Parties for (i) bodily injury, sickness, disease, death, or destruction of tangible property caused by Contractor and/or any of its Subcontractors and/or Sub-subcontractors, (ii) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Contractor, and/or any of the Indemnitors, or any person or entity for whom they are responsible, (iii) Contractor's failure to comply with any provision of the Contract Documents including Warranty obligations, and obligations to correct damaged and defective work, (iv) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and/or (v) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under this Contract and/or the other the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible. Moreover, and without limiting the foregoing, the Indemnitor's indemnity obligations under this Section include any and all claims by third parties against Indemnified Parties for consequential damages arising from and/or in connection with this Contract and/or the performance and/or failure of the Work.

**§3.18.5** The Contractor shall indemnify and hold harmless all of the Indemnified Parties from and against any costs and expenses (including reasonable attorneys' fees for all trial and appellate levels) incurred by any of the Indemnified Parties in enforcing any of the Contractor's defense, indemnity and hold-harmless obligations under this Contract.

**§3.18.6** The Contractor shall include in all Subcontracts provisions by which each Subcontractor agrees to defend, indemnify and hold harmless Contractor and the Indemnified Parties from and against liability, damages, losses and costs, including, but not limited to, reasonable attorneys' fees for all trial and appellate levels, arising out of, in connection with, or resulting from the performance of the Work or any Subcontractor's obligations under the Contract Documents to the same extent and in the same manner as the Contractor is liable to Village pursuant to this provision.

**§3.18.7** Nothing herein is intended to serve as a waiver of sovereign immunity by the Village nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Village is subject to section 768.28, Florida Statutes, as may be amended from time to time.

**§3.18.8** The provisions of this Section shall survive final completion and final payment or termination of this Contract.

## **ARTICLE 4 CONTRACT ADMINISTRATION**

### **§4.1 The Owner's Representative**

**§4.1.1** The Owner's Representative is the person or entity retained by the Village pursuant to Section 2.7 of the Agreement and identified as such in the Agreement and these Modified General Conditions to the Construction Contract.

**§4.1.2** Duties, responsibilities, and limitations of authority of the Owner's Representative as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Village, Contractor, and A/E Professionals. Consent shall not be unreasonably withheld.

## **§4.2 Administration of the Contract**

**§4.2.1** The A/E Professionals will provide administration of the Contract as described in the Contract Documents and will be one of the Village's representative with the authorities described herein during construction until the date the A/E Professionals issues the final Certificate for Payment. The A/E Professionals will have authority to act on behalf of the Village only to the extent provided in the Contract Documents.

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

**§4.2.3** On the basis of the site visits, the A/E Professionals will keep the Village reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Village (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The A/E Professionals will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The A/E Professionals will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### **§4.2.4 Communications**

The Village and Contractor shall be able to communicate with each other, copying the A/E Professionals in all communications that relate to or affect the A/E Professionals' services or professional responsibilities. The Village shall promptly notify the A/E Professionals of the substance of any direct communications between the Village and the Contractor otherwise relating to the Project. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Village. The Contract Documents may specify other communication protocols. Contractor hereby authorizes and consents to direct communications, at any time and in any fashion, between Village and any Subcontractors and Sub-subcontractors on the Project, regarding the Work performed on the Project and the status of payments to said persons or entities for said Work.

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

**§4.2.6** The Village, the Owner's Representative, and the A/E Professionals have authority to reject Work that does not conform to the Contract Documents. Whenever any one of them consider it necessary or advisable, each of them has authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Village, the Owner's Representative, or the A/E Professionals to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§4.2.7** The A/E Professionals will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The A/E Professionals' action will be taken in accordance with the submittal schedule approved by the A/E Professionals or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the A/E Professionals' professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The A/E Professionals' review of the Contractor's submittals shall not relieve the Contractor of the obligations under Article 3. The A/E Professionals' review shall not constitute approval of safety precautions or of any construction means, methods, techniques,

sequences, or procedures. The A/E Professionals' approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§4.2.8** The A/E Professionals may prepare Change Orders and Construction Change Directives, and may recommend minor changes in the Work as provided in Article 7. The A/E Professionals will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Article 3.

**§4.2.9** The A/E Professionals will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Village, for the Village's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10, which final Certificate for Payment cannot be issued unless all requirements of the Agreement are performed pursuant to Section 9.10.

**§4.2.10** If the Village and A/E Professionals agree, the A/E Professionals will provide one or more Project representatives to assist in carrying out the A/E Professionals' responsibilities at the site. The Village shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

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

**§4.2.13** The A/E Professionals' decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

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

**§4.2.15** Should the Contractor request information, interpretations of Contract Documents, use of alternates, approval of samples (but not Shop Drawings) or make other similar requests (hereinafter "RFI" or "RFIs"), it shall do so in good faith, in writing, and in a reasonable time and fashion. The A/E Professionals' response to RFIs will be made in writing and within five (5) business days except for emergencies which shall be within three (3) business days. The period shall be extended if the A/E Professionals is not able to respond due to the failure of Contractor to provide adequate and accurate information to the A/E Professionals. Furthermore, should the A/E Professionals require compensation to review any Contractor requests which are abusive or unreasonable in number or timing, the A/E Professionals shall expedite its review of the RFIs provided Contractor agrees in writing to reimburse Village for any engineering fees necessitated in responding to such RFIs. Contractor agrees that Village may deduct any such engineering fees from any sums otherwise due Contractor.

**§4.2.16** With regard to the submission and approval of Shop Drawings or other submittals, the period of time for response is as soon as reasonably possible, but no longer than fifteen (15) business days, except for emergencies which shall be reviewed by A/E Professionals in three (3) business days. It is Contractor's responsibility to determine in advance the amount of time A/E Professionals will take to review Shop Drawings or submittals as provided in Article 3, and what information will be required for adequate review. Contractor is further responsible for submitting thorough and complete requests for review or approval in sufficient time so as not to cause any delay to the Contractor's Work. Contractor shall submit Shop Drawings in accordance with the submittal schedule. Contractor will not be entitled to an extension of the Contact Time or increase to the Contract Sum due to any delay on the part of A/E Professionals, unless Contractor can demonstrate by clear and convincing documentation that Contractor properly submitted the request in accordance with the approved submittal schedule and A/E Professionals failed, due to no fault of Contractor,

to respond in accordance with the approved submittal schedule, and was in fact delayed, which delay could not have otherwise been avoided by Contractor.

**§4.2.17** Notwithstanding any other provision to the Contract, the Owner's Representative or the A/E Professionals do not have authority to authorize changes to the Contract Documents. Only Village shall be authorized to execute Change Orders, or otherwise modify these Contract Documents. Should Contractor desire to change any materials, or equipment required by Construction Change Directives, Contractor must first notify the Village, Owner's Representative, and A/E Professionals of its intent to deviate from the Contract Documents by preparing a Construction Change Directive and obtain written approval for performance of any Work which changes or deviates from the Contract Documents. Failure to obtain said approval in writing will bar Contractor from any claim for additional compensation, delays or arguing that the A/E Professionals directed the work.

## **ARTICLE 5 SUBCONTRACTORS**

### **§5.1 Definitions**

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

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

### **§5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

**§5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Village and A/E Professionals the information required by Article 10 of the Contract.

**§5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Village or A/E Professionals has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§5.2.3** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Village or A/E Professionals makes reasonable objection to such substitution.

### **§5.3 Subcontractual Relations**

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

**§5.3.1** Subcontract Agreements. Contractor hereby agrees that each subcontract agreement shall contain provisions granting the Contractor the right to terminate the subcontract at any time for the Contractor's convenience and without cause. Each subcontract agreement shall preserve and protect the rights of the Village, Owner's Representative, and A/E Professionals under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor

that the Contractor, by the Contract Documents, has against the Village. Where appropriate, the Contractor shall require each Subcontractor to enter into similar written agreements with Sub-Subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-Subcontractors.

**§5.3.2** Subcontractor and Material and Equipment Manufacturer Warranties: Contractor shall have each subcontractor performing Work at this Project execute warranties for a minimum period of five (5) years in favor of the Village utilizing forms approved by the Village. Contractor shall also have the subcontractors and material or equipment manufacturers execute Extended Warranties if required by the Contract Documents in favor of the Village utilizing the forms approved by Village.

#### **§5.4 Contingent Assignment of Subcontracts**

**§5.4.1** The Contractor hereby assigns to the Village an option to accept assignment of all of Contractor's contract rights with respect to Subcontractors and material and equipment suppliers that contracted to provide Work, materials and equipment to the Project in accordance with the Contract Documents, provided that Village may elect in writing to exercise that option only after proper termination of the Contractor for Contractor's default. For those subcontract agreements which the Village accepts by notifying the Subcontractors and Contractor in writing, the option shall include, but not be limited to, all Contractor's rights to make claims regarding quality of the Work and warranty claims. It is further agreed that all Subcontracts and material and equipment purchase contracts entered into by Contractor or its Subcontractors or material suppliers, shall contain a provision stating that, if after termination of Contractor for Contractor's default or completion of the Work, the Village may bring any claim directly against any Subcontractor of Contractor, including any surety bond furnished for or on behalf of such Subcontractor, for breach of contract, warranty rights, quality of workmanship, and create third party beneficiary rights of Village in said agreements. It is further agreed and understood that such assignment(s) and third party beneficiary rights are part of the consideration to Village for entering into this Agreement with Contractor and may not be withdrawn. Subcontractor or equipment and material suppliers shall be notified of Village's rights. Additionally, nothing contained in this Agreement shall constitute an assignment of Contractor's rights against the Village or create any third party beneficiary rights in any Subcontractors or material and equipment suppliers of Contractor. The purpose of this provision is to allow the Village, in addition to Contractor, to make claim for damage or indemnification directly against any Subcontractors or material and equipment suppliers that may be ultimately responsible for defects or deficiencies in the Work or materials and equipment. Additionally, this assignment is for the purpose of permitting Village to require any such Subcontractor or materials and equipment suppliers to complete the unperformed obligations under such Subcontract, should the Contractor be in default or be terminated by Village.

**§5.4.2** Nothing in this Article or Agreement shall be deemed to create any contractual relationship between the Village and any Subcontractor, material provider or supplier or to create any rights of any Subcontractor against the Village for any actions, debts, obligations, responsibilities or liabilities occurring prior to any assignment executed pursuant to this Article.

**§5.4.3** Upon assignment to the Village under this Section 5.4, the Village may further assign the subcontract to a successor contractor or other entity.

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

#### **§6.1 Village's Right to Perform Construction and to Award Separate Contracts**

**§6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Village under separate agreements. The Village reserves the right to perform construction or operations related to the Project with the Village's own forces and with Separate Contractors.

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

**§6.1.3** The Contractor shall provide for coordination of the activities of the Village's own forces and of each Separate Contractor with the Work of the Contractor. The Contractor shall participate with any Separate Contractors and the Village in reviewing their construction schedules. The parties acknowledge that the Contractor's schedule has included time for all known separate Village contractors to perform their work, based on Contractor's experience and knowledge. The Contractor shall review those portions of the Contract Documents to be performed by the Village's

separate contractors, if any, that may impact Contractor's performance of its Work, and that may be interrelated with the Work to be performed by the Contractor, and shall schedule those separate contractors' work so as to cause no delay to the Work.

**§6.1.4** Unless otherwise provided in the Contract Documents, when the Village performs construction or operations related to the Project with the Village's own forces or with Separate Contractors, the Village or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12, as may be applicable.

**§6.1.5** If any part of the Work depends upon proper execution of work performed by Village or Village's separate contractors, the Contractor, its Subcontractors, and their respective Sub-subcontractors shall, prior to proceeding with the Work, inspect such Work and promptly report to Village any apparent discrepancies or defects in such other Work. Failure of the Contractor, its Subcontractors, or their respective Sub-subcontractors to comply with these requirements shall bar any claims thereafter that defects in Contractor's Work, or delays in the schedule, are due to defects in the Work performed by others. Similarly, if any part of the work performed by Village or Village's separate contractors depends upon proper execution of Work performed by Contractor, its Subcontractors, and their respective Sub-subcontractors, Village's separate contractors shall, prior to proceeding with the work, inspect such Work and promptly report to Contractor any apparent discrepancies or defects in such Work. Failure of Village's separate contractors or utility contractors to comply with these requirements shall bar any claims thereafter that defects in Village's separate contractors' work are due to defects in the Work performed by Contractor.

**§6.1.6** Contractor shall provide Village's separate contractors with a reasonable opportunity for the introduction and storage of their materials, equipment and execution of their work.

## **§6.2 Mutual Responsibility**

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

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

**§6.2.3** The Contractor shall reimburse the Village for costs the Village incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Village shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

**§6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Village or Separate Contractor as provided in Section 10.2.10.

**§6.2.5** The Village and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Article 3.

## **§6.3 Village's Right to Clean Up**

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

## **ARTICLE 7 CHANGES IN THE WORK**

### **§7.1 General**

**§7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or Field Directive for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§7.1.2** A Change Order shall be based upon agreement among the Village, Contractor, and A/E Professionals. A Construction Change Directive requires agreement by the Village and A/E Professionals and may or may not be agreed to by the Contractor. A Field Directive for a minor change in the Work may be issued by the A/E Professionals, subject to authorization by the Village.

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

### **§7.2 Change Orders**

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

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

**§7.2.2** All Claims arising out of or relating to a Change Order shall be deemed waived unless expressly reserved in such Change Order. Contractor is specifically prohibited from unilaterally preserving Claims, including Claims for extension of the Contract Time. Notwithstanding any other provision to the Contract, the A/E Professionals or its consultant will not have authority to authorize changes to the Contract Documents.

**§7.2.3** Agreement on any Change Order shall constitute a final settlement of all matters which the Contractor knew or should have known relating to the change in the Work that is the subject of the Change Order, including but not limited to all direct and indirect costs associated with such change and all adjustments to the Contract Sum and Contract Time.

**§7.2.4** Change Order requests shall not be considered unless and until submitted in writing to the Village and the A/E Professionals together with documentation detailing the change and supporting the requested increase or decrease in the Contract Sum and/or Contract Time. Such documentation must show: (i) all materials by quantity and price, (ii) all labor by unit price, (iii) insurance, (iv) permits, (v) payroll taxes and employee benefits, (vi) equipment by quantity and rate, (vii) Subcontractor markup (limited to 10% for overhead and profit) unless otherwise approved in writing by Village, (viii) Contractor's Fee; (ix) a clear and concise statement of the basis for the claim, including dates and names of parties and people involved, with back up information, Contract Documents relied upon, including reference to sections of the Drawings and Specifications, daily reports, weather reports, meeting minutes, correspondence and the like; and (x) an updated schedule meeting the requirements of the Contract Documents, showing the impact of the Change to the agreed upon Project Schedule. Any requested increase to Contract Sum for the Contractor's General Condition costs shall be limited to actual on-site cost increases for General Conditions items incurred as a direct result of the change.

**§7.2.5** Under no circumstances shall increase in the cost of materials or labor be considered the basis for a Claims by the Contractor for additional compensation, no matter how severe the increase of the cost of the materials or labor to the Contractor.

**§7.2.6** In the event of any dispute between Village and Contractor arising out or relating to the requirements of the Contract, any modification, or the terms of a pending Change Order, the Contractor shall continue to perform the Work, including any Work required by pending Change Orders, and Construction Change Directives and Village shall continue to make payments of undisputed sums in accordance with the Contract Documents, pending final resolution of such dispute.

### **§7.3 Construction Change Directives**

**§7.3.1** A Construction Change Directive is a written order prepared by the A/E Professionals and signed by the Village and A/E Professionals, directing a change in the Work prior to agreement on adjustment, if any, in the Contract

Sum or Contract Time, or both. The Village may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties in writing and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

**§7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner's Representative shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner's Representative may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs, provided that Subcontractors may not charge more than ten percent (10%) for overhead and profit on their direct costs of the changed work unless otherwise approved in writing by the Village;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

**§7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

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

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

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

**§7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Village, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The A/E Professionals will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the A/E Professionals determines, in its professional judgment, to be reasonably justified. The A/E Professionals' interim determination of cost shall adjust the Contract Sum on the same

basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

#### **§7.4 Field Directives for Minor Changes in the Work**

The A/E Professionals and/or the Owner's Representative may recommend minor changes in the Work that are not inconsistent with the intent of the Contract Documents and do not require an adjustment in the Contract Sum or an extension of the Contract Time. The A/E Professionals' or Owner's Representative Field Directive for minor changes shall be implemented in writing issued by the Village. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Village and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the A/E Professionals' or Owner's Representative order for a minor change without prior notice to the A/E Professionals or Owner's Representative, as applicable, that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### **ARTICLE 8 TIME**

#### **§8.1 Definitions**

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

**§8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§8.1.3** The date of Substantial Completion is the date certified by the Owner's Representative in accordance with Article 9.

**§8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

**§8.1.5** The term "business day" shall mean any weekday, Monday through Friday, that is not a federal or state holiday. Contractor may work on Saturdays, at Contractor's cost, as required to meet the Schedule and complete the Work within the Contract Time. Village shall not be responsible for payment of overtime for Work performed on Saturdays without Village's written prior approval.

#### **§8.2 Progress and Completion**

**§8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Village in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Village.

**§8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### **§8.3 Delays and Extensions of Time**

**§8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Village; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries impacting the South Florida construction industry, unavoidable casualties, or adverse weather conditions documented in accordance with Section 15.1.6.2, or (4) by other causes (unrelated to any act/omission of Contractor or any individuals or entities for which Contractor is responsible) that the Contractor asserts and the A/E Professionals and/or Owner's Representative determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner's Representative may determine.

**§8.3.2** Adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, in whole or in part, by the Contractor, or its Subcontractors and material suppliers; (2) could not be limited or avoided

by the Contractor's timely notice to the Village of the delay; (3) is of a duration not less than one (1) Business day; (4) impacts the critical path of the Project and (5) was mitigated by the Contractor to the maximum extent practicable. All requests for extensions of time other than those associated with changes in the Work, must be submitted in writing to the Village within five (5) calendar days of the event giving rise to the delay. Failure to so request an extension will constitute a waiver of any right for an extension of time.

**§8.3.3** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§8.3.4** No Damage for Delays. Except for delays due to the gross negligence of the Village or active interference by the Village, Contractor's sole and exclusive remedy for delays shall be an increase to the Contract Time. Contractor shall not be entitled to an increase in the Contract Price or to payment of any other additional monies from Village for costs incurred as a result of such delay, including additional or extended General Conditions costs or General Requirements costs. Village's exercise of its rights under this Contract shall in no way be considered active interference.

**§8.3.5** All schedule float is the property of Village and may not be used by Contractor.

**§8.3.6 No recovery for changed market conditions.**

**§8.3.6.1** In entering into the Contract, Contractor represents and warrants that it has accounted for any and all labor or material shortages, delivery lead time, or price increases that may be caused by local and or national conditions, whether known or unknown at the time of entering into the Contract (the "Market Conditions"). Contractor further specifically represents and warrants that it has considered all impacts and potential impacts, including any current and future supply chain disruptions and labor shortages, associated with the following events (1) COVID-19, Monkey Pox, and related worldwide pandemics ("Pandemics"); (2) the current military conflicts involving Russia and the Ukraine and Israel and Hamas (the "Military Conflicts"); and (3) the current international tariffs imposed by the United States administration (the "Tariffs"). The Contractor further represents and warrants that in entering into this Agreement, it has accounted for any and all labor or material shortages, delivery lead time, or price increases that may be caused by local and or national conditions, including but not limited to impacts from the Pandemics, the Military Conflicts, and the Tariffs. The Contractor also represents and warrants that in determining time requirements for procurement, installation, and construction completion, Contractor has taken into account these impacts from the Market Conditions, Pandemics, the Military Conflicts, and the Tariffs, and has included all of those factors in the Project Schedule and Contract Sum.

The Contractor will not seek any price increases or time extensions relating to or arising from any impacts from the Market Conditions, Pandemics, the Military Conflicts, and the Tariffs.

The Owner shall not be required to make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Contractor to comply with the requirements of this Article.

**§8.4 Village's Delay and Entitlement to Liquidated Damages**

**§8.4.1** The Contractor acknowledges that the Contract Time for the Substantial Completion of the Work requires that the Substantial Completion of the entire Work occur on or before specified date(s) as provided in Article 4 of the Contract, subject to any extensions of the Contract Time. "Substantial Completion" is defined in § 9.8.1 of these Modified General Conditions. The Contractor acknowledges and agrees that the Village will suffer severe financial loss in the event of delay and Village shall be entitled to liquidated damages as provided in the Contract Documents.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

**§9.1 Contract Sum**

**§9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Village to the Contractor for performance of the Work under the Contract Documents.

**§9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Village or Contractor, the applicable unit prices shall be equitably adjusted.

## **§9.2 Schedule of Values**

Before the first Application for Payment, the Contractor shall submit a schedule of values to the A/E Professionals, Owner's Representative, and Village, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner's Representative. This schedule, unless objected to by the Owner's Representative, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Owner's Representative and supported by such data to substantiate its accuracy as the Owner's Representative may require, and unless objected to by the Owner's Representative, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

## **§9.3 Applications for Payment**

**§9.3.1** At least twenty (20) days before the date established for each progress payment, the Contractor shall submit to the A/E Professionals and Village an itemized Application for Payment prepared in accordance with the schedule of values for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Village or Owner's Representative require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retention if provided for in the Contract Documents.

**§9.3.1.1** Along with the Contractor's Application for Payment, Contractor shall submit to the A/E Professionals and Village the following;

- .1** a sworn and certified progress payment affidavit which recites that all laborers, material suppliers and subcontractors dealing with the Contractor have been paid in full up through the date of the affidavit;
- .2** partial releases of lien from Contractor, material suppliers and subcontractors and any lienors serving a Notice to Village as required by this section 9.3, and evidence of proof of payment of any indebtedness incurred with respect to the Work of Contractor as may be required by Village;
- .3** evidence that all Work has been fully performed as required pursuant to the Contract Documents up to the time of the request for payment, and the Work has been inspected and accepted by the Owner's Representative and any governmental authorities required to inspect the Work, and such other evidence that the Village may reasonably require;
- .4** an updated construction schedule meeting the requirements of Article 3;
- .5** all other requirements of section 12.1 of the Agreement; and
- .6** Any other document or information required elsewhere in the Contract Documents as a condition precedent to payment.

### **§9.3.1.2 Release of Liens.**

Each release of lien given to the Village shall waive and release any lien rights and claims of the lienors to the extent payment is made with respect to any Work performed through the date of that progress payment. Contractor shall submit a partial release of lien for the current Application for Payment, submit partial releases of lien from all lienors through the date of the last previous payment made, and submit a partial release of lien conditioned only upon payment from Contractor, through the date of the current Application for Payment. For Final Payment, Contractor must submit a Final Release of Lien for itself and for all lienors. Each Final Release of Lien shall include a provision for the release of all Claims and causes of action.

In addition, as Contractor is fully responsible for obtaining the Manufacturers' Warranties, Contractor shall be responsible for obtaining inspections or other acceptable documentation by the Manufacturers' representative for equipment and supplies prior to payment, and delivering, together with the final application for payment and supporting documentation all warranties required by the Contract Documents.

**§9.3.1.3** As provided in the Contract Documents, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Owner's Representative, but not yet included in Change Orders.

**§9.3.1.4** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Village, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing and provided that Contractor has complied with the Contract Documents related to stored materials. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Village to establish the Village's title to such materials and equipment or otherwise protect the Village's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Village no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Village shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

#### **§9.4 Certificates for Payment**

**§9.4.1** The A/E Professionals will, within fourteen (14) days after receipt of the Contractor's Application for Payment, either (1) issue to the Village a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Village a Certificate for Payment for such amount as the A/E Professionals determines is properly due, and notify the Contractor and Village of the A/E Professionals' reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Village of the A/E Professionals' reason for withholding certification in whole as provided in Section 9.5.1.

**§9.4.2** The issuance of a Certificate for Payment will constitute a representation by the A/E Professionals to the Village, based on the A/E Professionals' evaluation of the Work and the data in the Application for Payment, that, to the best of the A/E Professionals' knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the A/E Professionals. However, the issuance of a Certificate for Payment will not be a representation that the A/E Professionals has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Village to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§9.5 Decisions to Withhold Certification**

**§9.5.1** The A/E Professionals or Village may withhold or reject a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Village, if in the Village's or A/E Professionals opinion the representations to the Village required by Section 9.4.2 cannot be made. If the Village or A/E Professionals is unable to certify payment in the amount of the Application, the Village or A/E Professionals will notify the Contractor as provided in Section 9.4.1. If the Contractor and A/E Professionals cannot agree on a revised amount, the A/E Professionals will promptly issue a Certificate for Payment for the amount for which the A/E Professionals is able to make such representations to the Village. The Village or A/E Professionals may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Village's or A/E Professionals' opinion to protect the Village from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Article 3, because of

- .1 defective Work not remedied;
- .2 third party claims of lien filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Village is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

- .5 damage to the Village or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover liquidated damages for the anticipated delay;
- .7 failure of the Work to progress satisfactorily or according to schedule;
- .8 repeated failure to carry out the Work in accordance with the Contract Documents;
- .9 failure to provide releases of lien for each Application for Payment in accordance with the Contract Documents; or
- .10 any other failure to perform a material obligation contained in the Contract Documents

**§9.5.2** When either party disputes the A/E Professionals' decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§9.5.4** If the A/E Professionals withholds certification for payment under Section 9.5.1.3, the Village may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Village makes payments by joint check, the Village shall notify the A/E Professionals and the Contractor shall reflect such payment on its next Application for Payment.

## **§9.6 Progress Payments**

**§9.6.1** After the A/E Professional has issued a Certificate for Payment, the Village shall make payment in the manner and within the time provided in the Contract Documents, subject to Paragraph 9.5.1 of the Amended General Conditions, and shall so notify the A/E Professionals.

**§9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Village, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**§9.6.3** The Village has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Village to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Village shall have the right to withhold payment and contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Village nor A/E Professionals shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§9.6.4** The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2 and 9.6.3.

**§9.6.5** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Village shall not constitute acceptance of Work that is not in accordance with the Contract Documents.

**§9.6.6** Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Village.

**§9.6.7** Village may, in its discretion, make all or any portion of any progress payment by check payable jointly to the order of Contractor and any lienor giving timely notice, and deduct said sum from the balance then due Contractor. However, such payment, if made, shall not create any third party beneficiary or other rights in such lienor. In making such payments to lienors/subcontractors, the Village shall require such lienor to execute the waiver of lien form in accordance with §713.06, Fla. Stat.

## **§9.6.8 Transfer of Lien.**

**§9.6.8.1** Contractor shall not permit any mechanic's, laborer's or materialmen's lien to be filed against the Project site or any part thereof by reason of any Work, labor, services or materials supplied or claimed to have been supplied to the Project. In the event such a lien is found or claimed against the Project, Contractor shall within ten (10) days after

notice of the lien discharge the lien or liens and cause a satisfaction of such lien to be recorded in the public records of Miami-Dade County, Florida, or cause such lien to be transferred to a bond, or post a bond sufficient to cause the Clerk of the Circuit Court of Miami-Dade County, Florida, to discharge such lien pursuant to Chapter 713.24, F.S. In the event Contractor fails to so discharge or bond the lien or liens within such period as required above, Village shall thereafter have the right, but not the obligation, to discharge or bond the lien or liens. Additionally, Village shall thereafter have the right, but not the obligation, to retain out of any payment then due or to become due Contractor, one hundred fifty percent (150%) of the amount of the lien and to pay Village 's reasonable attorneys' fees and costs incurred in connection therewith.

**§9.6.8.2** In the event any liens should be filed against the Property by any subcontractors or material suppliers in connection with labor or services performed under this Agreement, the materials incorporated into or delivered to the Property, Contractor shall defend, indemnify and hold the Village harmless against all such liens and suits or other proceedings pertaining thereto including any and all costs and attorneys' fees, at both the trial and appellate level. If any such liens are recorded then Contractor must immediately transfer such lien, and in no event no later than seven (7) calendar days after it receives written notice from Village of the filing of the lien, by (a) depositing in the office of the Clerk of the Circuit Court an amount sufficient to transfer said lien; or (b) by filing with the Clerk's office a bond executed by a surety licensed to do business in the State of Florida in accordance with the provisions of Section 713.24, Florida Statutes, and its successors or (c) recording a notice of bond reflecting the prior existence of the Section 713.23, Florida Statutes Payment Bond, to the extent one was provided at the time of execution of the Contract Documents. Should Contractor fail to transfer such lien, the Village may, at its option, do so and deduct the amount expended, including all costs and attorney's fees incurred from any payment then due Contractor.

#### **§9.6.9 Payments to Subcontractors by the Village.**

**§9.6.9.1** If the Village fails to approve an application for payment for a cause which is the fault of the Contractor and not the fault of a particular subcontractor, or if the Contractor fails to make a payment which is properly due to a particular subcontractor, the Village may after ten (10) calendar days' written notice to Contractor, pay such subcontractor and Contractor jointly, less the amount to be retained under his subcontract.

**§9.6.9.2** The Village shall have no obligation to pay, or to see to the payment of, any monies to any subcontractor. Nothing contained in herein shall be deemed to create any contractual relationship between the Village and any subcontractor or to create any rights in any subcontractor against the Village.

**§9.6.10** No payments made under this Contract shall be evidence of performance of this Contract, either wholly or in part, and no payment including final payment shall be construed to be an acceptance of defective Work or improper materials, nor shall use of the Work by the Village constitute acceptance of the Work hereunder or any part thereof or a waiver of any of the Village's claims..

**§9.6.11** If the Village is entitled to reimbursement or payment from the Contractor or Surety (if any) under or pursuant to the Contract Documents, such payment shall be made promptly upon written demand by the Village. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor or Surety fail to promptly make any undisputed payment due the Village after such written notice, the Village shall have an absolute right to offset such amount against the Contract Sum and may, in the Village's reasonable discretion, elect either to: (1) deduct an amount equal to that which the Village is entitled from any payment then or thereafter due the Contractor from the Village; or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Village is entitled. Nothing contained herein shall be deemed an admission of liability by Contractor nor limit Contractor's right to contest same. Nothing contained in this Section requires consent of Surety or notice to surety of Village's intent to take such action.

**§9.6.12** Provided the Village has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Village from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Village shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## **§9.7 Failure of Payment**

If the A/E Professionals does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Village does not pay the Contractor all undisputed amounts within thirty (30) days after the date established in the Contract Documents, the amount certified by the A/E Professionals, then the Contractor may, upon fourteen (14) additional days' notice to the Village and A/E Professionals, suspend the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

## **§9.8 Substantial Completion**

**§9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Village can occupy or utilize the Work for its intended use and obtain all permits, licenses, and certificates required for such use. Specifically, and in addition to the foregoing, in order to achieve Substantial Completion for the Work, Contractor must achieve the following additional, minimum requirements:

1. Site cleanup and restoration of all exterior elements including roof surfaces, ledges, gutters, windows, exterior facades (including without limitation removal of all excess materials, debris, supplies, equipment, temporary structures, ladders, scaffolding, staging and/or trailers) has been completed;
2. All parking areas, all landscaping, all exterior building finishes, all interior building finishes, all interior spaces, all structural, mechanical, and technical systems required by the Contract Documents, all fire and life safety systems, are completed and ready for use or occupancy;
3. The Work is ready for occupancy, completed in accordance with the Drawings and Specifications and the Contract Documents including, but not limited to: (1) low voltage system, if any; (2) MEP trim out, if any; (3) security systems, if any; (4) finish painting, if any; (5) designated flooring, if any; (6) millwork, if any; and (7) cabinets, if any; all as applicable, are complete.
4. The Contractor has submitted the Contractor's Punch List with respect to such items and they have been completed, inspected and approved by the A/E Professionals and Village as to scope, number, quality and content;
5. Completion of the those items on the Substantial Completion Punch List the A/E Professionals deems necessary for Substantial Completion;
6. The Work is ready for occupancy, completed in accordance with the Plans and Specifications and the Contract Documents and, to the extent it is within the Contractor's scope of Work, all persons or entities having jurisdiction over the Project have issued the appropriate permits, and authorizations for the construction and use of the Work and the Work has received a temporary or final Certificate of Occupancy; and
7. Contractor has complied with the turnover obligations set forth in § 9.9 (including subparts) below.

**§9.8.2** The Contract Time and liquidated damages will continue to run and until all Substantial Completion Punch List items are complete and other conditions for Substantial Completion as set forth above and elsewhere in the Contract Documents are fully satisfied.

**§9.8.3 Substantial Completion List.** When the Contractor considers that the entire Work is Substantially Complete, the A/E Professionals, Contractor and Village shall inspect the Work within fifteen (15) days of Village's receipt of written notice from Contractor. Based upon the Substantial Completion Inspection, the A/E Professionals shall prepare, coordinate, and submit to the Village and Contractor a detailed list of all remaining Work to be completed or corrected in the Work (the "Substantial Completion List"). The A/E Professionals will identify all work necessary to be completed or corrected prior to issuance of the Substantial Completion Certificate, and the remaining items the Contractor shall correct prior to final payment. The Contractor shall, within five (5) days complete and correct all

items listed as Substantial Completion items on the Substantial Completion List as a condition to the A/E Professionals' Certification of Substantial Completion. The Contractor shall notify Village and A/E Professionals when all items in the Substantial Completion List necessary for Substantial Completion are complete and correct, and request inspection by the Village and A/E Professionals. The A/E Professionals will make an inspection to determine whether the Substantial Completion List is complete. If the A/E Professionals' inspection discloses any item, which is not sufficiently complete in accordance with the Contract Documents so that the Village can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the A/E Professionals. In such case, the Contractor shall then submit a request for another inspection by the A/E Professionals to determine Substantial Completion. After the second inspection, the Contractor shall be responsible for all costs incurred by Village and A/E Professionals to re-inspect the Work a third, or fourth time to determine Substantial Completion. The Contractor's obligation to complete all Work in accordance with the Contract Documents shall not be deemed waived, excused, or otherwise satisfied by any failure of any person or entity to include, discover, or identify any incomplete or defective Work in any Punch List, completion list, or inspection report, including without limitation the Substantial Completion List.

**§9.8.3.1** Village may retain out of any payments that are due Contractor, any amounts necessary to complete and correct all work listed on the Substantial Completion List in addition to the retainage being held until all of the Work identified on the Contractor's Substantial Completion List has been fully and adequately completed and corrected and A/E Professionals has issued a Certificate of Substantial Completion.

**§9.8.3.2** When the Work or designated portion thereof is Substantially Complete, and the Contractor has completed the items listed on the Substantial Completion List as necessary for the issuance of the Certificate of Substantial Completion, the A/E Professionals will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion and responsibilities of the Village and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance. Warranties required by the Contract Documents shall commence on the date of Substantial Completion.

**§9.8.3.3** The Certificate of Substantial Completion shall be submitted to the Village and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

## **§9.9 Partial Occupancy or Use or Turnover of the Project to Village**

**§9.9.1** The Contractor shall be responsible for operating and maintaining the Work and all systems and equipment that are part of the Work until Substantial Completion as defined in Paragraph 9.8 of the AIA A201 Modified General Conditions above or until a mutually agreed upon earlier Turnover as set forth herein.

**§9.9.2** The Village may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy, use, or turnover is consented to by the insurer as may be required and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use or turnover may commence whether or not the portion is substantially complete, provided the Village and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Owner's Representative as provided under this section. Consent of the Contractor to partial occupancy or use or turnover shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Village and Contractor or, if no agreement is reached, by decision of the Owner's Representative.

**§9.9.2.1** Immediately prior to such partial occupancy or use or turnover, the Village, Contractor, and Owner's Representative shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§9.9.3** Unless otherwise agreed upon, partial occupancy or use or turnover of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**§9.9.4** Prior to the time of Substantial Completion, Turnover or any partial occupancy or use may occur from Contractor to Village, the following minimum requirements must be met by Contractor and submitted to Village:

1. Contractor's installers and operation and regular maintenance personnel have met with Owner's Representative or other individuals as may be designated by Village, at the Project site, to provide complete instructions and training needed for proper start-up, operation, shut-down and maintenance of that part of Work. Instructions by manufacturer's representatives are required where installers are not experts in operating/maintenance procedures, or as specified in the Construction Documents. For operational equipment, installers shall demonstrate startup, shut-down, emergency operations, noise and vibration adjustments, safety, economy/efficiency adjustments, and other applicable operations, and shall review maintenance and operating instructions which are required to be performed in order to maintain in force applicable warranties, guaranties and bonds;
2. Contractor has provided Village with Three (3) heavy duty, bound, hard-cover books and one (1) electronic copy of same, properly identified on both the front and the spine of each binder and indexed, in suitable sets of manageable size, containing the following information related to all equipment and systems on the Project:
  1. Training, maintenance and operating manual information;
  2. emergency instructions;
  3. spare part listings;
  4. wiring diagrams;
  5. recommended "turn around" cycles;
  6. inspections procedures;
  7. shop drawings, product data, and any other applicable information;
  8. detailed information and records for maintenance performed on all equipment and systems on the Project, operated and maintained by Contractor prior to Substantial Completion
3. Contractor has provided Village with Three (3) heavy duty, bound, hard-cover books and one (1) electronic copy of same, properly identified on both the front and the spine of each binder and indexed, in suitable sets of manageable size, containing the following information:
  1. All Subcontractor warranties fully executed in the form approved by the Village;
  2. All Extended Warranties required by the Contract Documents;
  3. The Contractor's warranty; and
  4. A list of all Subcontractors, Sub-subcontractors and suppliers who performed Work on the Project or who furnished equipment or materials for use in the Project, such list to include the name, address, email address, and telephone number of the responsible person at all such entities.

**§9.9.5** The delivery, endorsement or assignment of such warranties shall not release the Contractor from obligations pursuant to the Contract Documents.

### **§9.10 Final Completion and Final Payment**

**§9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the A/E Professionals and Village will promptly make such inspection. When the A/E Professionals finds the Work acceptable under the Contract Documents and the Contract fully performed, the A/E Professionals will promptly issue a final Certificate for Payment stating that to the best of the its knowledge, information and belief, and on the basis of the A/E Professionals' on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The A/E Professionals' final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§9.10.2** Final payment, including any remaining retention shall not become due until the Contractor satisfies the requirements of the Contract Documents. As used in the Contract Documents, "Final Completion" shall mean such time after Substantial Completion and the following express conditions precedent to Final Payment have been met:

- .1 the A/E Professionals has issued a Certificate of Final Completion;
- .2 all "punch list" items have been fully completed to the reasonable satisfaction of Village and A/E Professionals, unless the failure of the same to issue is not due to the failure of Contractor to complete its scope of Work;
- .3 the final certificate of occupancy and all final governmental and utility authority permits have been issued, unless the final certificate of occupancy is delayed for reasons that are beyond the control of the Contractor and those for whom the Contractor is responsible;
- .4 Contractor has fully cleaned and restored the site with respect to all of the final punch list work; and
- .5 all temporary utilities are disconnected;

**§9.10.3** In addition to the above, Contractor shall have performed and or submitted (as applicable) to the A/E Professionals and Village the following:

- .1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Village or the Village's property might be responsible or encumbered (less amounts withheld by Village) have been paid or otherwise satisfied, or shall be paid out of Contractor's final payment;
- .2 consent of surety, if any, to final payment;
- .3 documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties;
- .4 all previously undelivered manufacturer and Subcontractor guarantees, warranties and manuals and documents;
- .5 final and or conditional releases of lien, waivers of claim, satisfactions of liens or claims, and such other affidavits as may be reasonably required by the Village to assure a lien-free and claim-free completion of the Work; Where Contractor is in a dispute with a Subcontractor and or supplier, consent of surety to Final Payment is acceptable.
- .6 To the extent A/E Professionals in missing any shop drawings and or submittals, Contractor will provide any such items requested in writing;
- .7 evidence that all temporary utilities have been disconnected;
- .8 the Contractor has fully cleaned and restored the site, including removal of all rubbish and construction debris;
- .9 all final governmental permits for which Contract is responsible under the Contract Documents have been issued and all permits have been closed out,
- .10 Contractor has complied with all partial occupancy or Turnover obligations set forth in Paragraph 9.9 of the AIA A201 Modified General Conditions above; and
- .11 Contractor has complied with all other requirements of the Contract Documents.

**§9.10.4** The Contractor's obligation to complete all Work in accordance with the Contract Documents shall not be deemed waived, excused, or otherwise satisfied by any failure of any person or entity to include, discover, or identify

any incomplete or defective Work in any punch list, completion list, or inspection report, including without limitation the Substantial Completion Punch List, or any further punch lists.

**§9.10.5** Final payment may be withheld on account of (1) defective Work not remedied, (2) claims or liens filed, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment, (4) failure to provide waivers of lien for all lienors giving notices, (5) damage to the Village's property caused by Contractor, its subcontractors or anyone working for Contractor, in which case a reasonable estimated amount of such damages shall be withheld from Contractor's payment until such damages are satisfactorily corrected, (6) failure to carry out the Work in accordance with the Contract Documents.

**§9.10.6** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the A/E Professionals or A/E Professionals so confirms, the Village shall, upon application by the Contractor and certification by the A/E Professionals, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the A/E Professionals prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§9.10.7** The making of final payment shall not constitute a waiver of Claims by the Village.

**§9.10.8** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of Claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

**§9.10.10** Prior to final payment, Contractor shall (1) organize maintenance and operating manual information into suitable sets of manageable size, and bind into individual binders properly identified and indexed; (2) include as applicable emergency instructions, spare part listing, warranties, guarantees or wiring diagrams, recommended "turn around" cycles, inspections procedures, shop drawings, product data, and any other applicable information; (3) Bind each manual of each set in heavy-duty, three-ring vinyl cover binders, and include pocket folders for folded sheet information; and (4) mark identification on both the front and the spine of each binder.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§10.1 Safety Precautions and Programs**

**§10.1.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall comply with all OSHA requirements and shall have a safety program in accordance with OSHA requirements.

**§10.1.2** If the Contractor fails to maintain the safety precautions required by law or directed by the Village, the Village may take such steps as necessary and charge the Contractor therefore. The Contractor shall be responsible for payment of any fines or penalties levied by OSHA or other similar entities relating to its Subcontractors violation of safety or health standards.

**§10.1.3** The failure of the Contractor to take any such action shall not relieve the Subcontractor of his obligations in Section 10.1.1.

### **§10.2 Safety of Persons and Property**

**§10.2.1** In any area where Contractor is working the Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and other persons who may be affected thereby, (2) all the Work and all materials and equipment to be incorporated therein, (3) invitees, licensees, employees and reasonably anticipated visitors of the Project; and (4) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. Contractor shall comply with all OSHA regulations regarding job safety and all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. A damage or loss to any property to the extent caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may

be liable, shall be remedied by the Contractor at his sole cost and expense.

**§10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§10.2.4** Contractor, in executing Work shall maintain Work areas on- and off-site free from environmental pollution that would be in violation of federal, state or local regulations as indicated and in compliance with Contract Documents.

**§10.2.5** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§10.2.6** The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under the Contract Documents. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable in whole or in part to the grossly negligent acts or omissions of the Village, Owner's Representative, A/E Professionals, or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable in whole or in part to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Article 3, which shall govern this Section.

**§10.2.7** Any damage to adjacent property or improvements shall be promptly repaired by the Contractor, if caused in whole or in part by Contractor or its Subcontractors, any Sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The foregoing is not intended to prevent the Contractor from making claim against any insurance that may provide coverage to the Contractor.

**§10.2.8** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents and theft. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Village and Owner's Representative.

**§10.2.9** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§10.2.10 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding seven (7) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§10.3 Hazardous Materials and Substances**

**§10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. Contractor shall not bring any hazardous materials onto the Project site unless specifically required by the Contract Documents. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area, take precautions not to exacerbate the conditions, and notify in writing the Village and Owner's Representative of the condition. Contractor shall comply with all applicable federal, state and local environmental laws, codes, ordinances and regulations including, but not limited to, all OSHA requirements and regulations.

**§10.3.2** Upon receipt of the Contractor's notice, the Village shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Village shall furnish in writing to the Contractor and Owner's Representative the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Owner's Representative will promptly reply to the Village in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Village. If either the Contractor or Owner's Representative has an objection to a person or entity proposed by the Village, the Village shall propose another to whom the Contractor and the Owner's Representative have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Village and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§10.3.3** The Village shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to or causes to be at the site.

**§10.3.4** The Contractor shall reimburse the Village for the cost and expense the Village incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site or negligently handles, (2) Contractor's willful misconduct; or (3) where the Contractor fails to perform its obligations under Section 10.3.1.

#### **§10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. Within ten (10) days of executing the Agreement, the Contractor shall furnish a hurricane preparedness plan to secure the site and prevent damage to the Project, which shall be attached as an exhibit to the Agreement as **Exhibit "H."**

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§11.1 Contractor's Insurance and Bonds**

**§11.1.1** Prior to the commencement of the Work, the Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described below in this Article and elsewhere in this Agreement and the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Florida and underwritten by a firm rated no less than "A-", and no less than "Class VII" as to financial strength, by Bests Rating Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent having an A.M. BEST's rating of "A-X" or better by Bests Rating. Certificates of Insurance shall be provided to the Village, reflecting the Village and Miami-Dade County as an Additional Insured, (Miami-Dade County, 111 NW 1st Street, Suite 2340, Miami, FL 33128) no later than ten (10) days after award of a Contract and prior to the execution of a Contract by Village and prior to commencing any Work. Each certificate shall include no less than (30) thirty-day advance written notice to Village prior to cancellation, termination, or material alteration of said policies or insurance. The insurance requirements may be satisfied through a combination of primary and excess insurance. The insurance coverage shall be primary insurance with respect to the Village, its officials, employees, agents and volunteers naming the Village and Miami-Dade County as additional insureds. Any insurance maintained by the Village shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include at a minimum the amounts set forth herein.

**§11.1.2** Contractor shall secure and maintain throughout the duration of this Contract insurance of such types and in such amounts not less than those specified below as satisfactory to the Village:

**§11.1.2.1** Commercial General Liability coverage with limits of liability of not less than a \$10,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit shall not exclude Explosion Collapse and Underground Hazards and Products, and Completed Operations shall be in the amount of \$10,000,000. The Village and Miami-Dade County must be shown as an additional insured with respect to this coverage. Minimum coverage shall include the following and the coverages and requirements set forth in this Contract:

- .1 personal injury;
- .2 broad form property damage;
- .3 blanket contractual liability;
- .4 XCU coverage; and
- .5 products and completed operations for 10 years.

**§11.1.2.2** Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of One Million Dollars (\$1,000,000.00) each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Work pursuant to this Contract who is not covered by Worker's Compensation insurance. In order for this requirement to be waived, Contractor must provide proof of exemption from such laws. Information regarding eligibility for an exemption from the State of Florida Workers' Compensation Law is available at:

<https://www.myfloridacfo.com/Division/wc/PublicationsFormsManualsReports/Brochures/Key-Coverage-and-Eligibility.pdf>.

Exemptions may be applied for online through the Florida Department of Financial Services, Division of Workers' Compensation at:

<https://www.myfloridacfo.com/Division/wc/Employer/Exemptions/default.htm>.

**§11.1.2.3** Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000) per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include Owned, Hired, and Non-Owned Vehicles.

**§11.1.2.4** Professional Liability Insurance with minimum limits not less than Two Million Dollars (\$2,000,000.00) per occurrence, single limit. For licensed professionals subcontracted by the Contractor, coverage shall be not less than \$1,000,000 per claim. If any required insurance purchased by the Contractor has been issued on a "claims made" basis, the purchaser of such claims made coverage must have an extended reporting or discovery "tail" period of not less than ten (10) years after the Project Completion Date and shall have a retroactive date to the date of the first design. A practice program that annually renews for ten years will meet this requirement.

**§11.1.2.5** Builder's Risk property insurance on an "all risk" basis not to exclude Windstorm and Hail including named Storm and Flood in an amount not less than one hundred (100%) percent of the insurable value of the Project, and upon the entire Work to the full replacement cost value thereof. This insurance shall include the interest of Village and Contractor and shall provide All-Risk coverage against loss by physical damage including, but not limited to, Fire, Extended Coverage, Theft, Vandalism and Malicious Mischief. The policy shall be in the name of the Village, Miami-Dade County, and the Contractor. The Insurance is to be maintained until final completion of the Work for the Project (as evidenced by the issuance of a Certificate of Completion) has been confirmed by Miami-Dade County and the Village.

**§11.1.2.6** Pollution Liability insurance in an amount not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate covering third party claims, remediation expenses, and legal defense expenses arising from on-site and off-site loss, or expense or claim related to the release or threatened release of Hazardous Materials that result in contamination or degradation of the environment and surrounding ecosystems, and/or cause injury to humans and their economic interest.

**§11.1.2.7** Excess/Umbrella Liability may be used to supplement minimum liability coverage requirements.

**§11.1.3** The insurance required by Section 11.1 shall be the primary insurance and shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater and shall name Village, Owner's Representative, A/E Professionals and A/E Professionals' Consultants as additional and named insureds covering bodily injury, death, property damage and personal injury and Village as an additional insured for claims to the extent caused by the Contractor's negligent acts or omissions during the Contractor's completed operations. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without

interruption from the date of commencement of the Work until the date of final payment except for completed operations coverage, which shall be maintained for four (4) years after the completion of the Project.

**§11.1.4** The Contractor shall not commence any portion of the Work under the Contract until it has obtained all insurance required under this Article 11 or the Agreement and, except for completed operations insurance or except as otherwise provided herein, shall maintain all such insurance policies for a period of not less than four (4) years after completion of this Contract.

**§11.1.5** The deductible on all insurance required of Contractor under this Article 11 or the Agreement shall not exceed ten thousand dollars (\$10,000.00) and shall in all events be paid by the Contractor.

**§11.1.6** Certificates of insurance, Additional and Named Insured Endorsements, and actual copies of the Insurance Policies in accordance with this Article shall be delivered to the Village prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance, and the certificates of insurance and endorsements are attached hereto as an exhibit to be incorporated in the Contract Documents. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 60 days' prior written notice has been given to the Village. Contractor shall not commence Work and shall not be entitled to any payments under the Contract Documents until the required policies have been delivered to Village and reviewed by Village's insurance professional and found to be in compliance with the Contract Documents.

**§11.1.7** An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.3. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

**§11.1.8** Contractor's failure to provide and maintain the insurance required by this Contract shall be grounds for termination, and Contractor shall be liable for all losses, damages, costs and expenses associated with the failure to maintain the required insurance.

**§11.1.9** The Village, its officials, employees, agents, volunteer's, Owner's Representative, A/E Professionals, and A/E Professionals' consultants and Miami-Dade County, its officials, employees, agents, and volunteers shall be identified as "additional insureds" and "named insured" on all general liability and other policies identified in this Section 11.1 with the exception of Contractor's Professional Liability policy, including without limitation all policies covering completed and ongoing operations. The Contractor, Subcontractors and Sub-subcontractors comprehensive general liability policies shall also provide the following ISO endorsements: ISO CG 20 10 1185 or its equivalent. Contractor shall include provisions in subcontracts requiring subcontractor insurance as set forth herein to name the Village, its officials, employees, agents, volunteer's, Owner's Representative, A/E Professionals, and A/E Professionals' consultants and Miami-Dade County, its officials, employees, agents, and volunteers as additional insureds. Contractor shall also furnish copies of such subcontractor insurance certificates to Village upon request.

**§11.1.10** Except to the extent covered by and paid by insurance, the Contractor shall be responsible for all loss or damage Contractor or its Subcontractors cause to the Work, including the Contractor's materials delivered to site for incorporation therein and all property issued to the Contractor by the Village for use or incorporation in the Work.

**§11.1.11** The Contractor shall secure, pay for, and maintain whatever insurance they may deem necessary for protection against loss of owned or rented capital equipment and tools, including any tools owned by mechanic, any tools, equipment, stagings, towers and forms owned or rented by its subcontractors or agents under this Contract. Failure of the Contractor to secure such insurance or to maintain adequate levels of coverage shall not obligate the Village or its agents and employees for any losses of owned or rented equipment or for any Work damaged. If the Contractor secures such insurance, the insurance policy shall include a waiver of subrogation as follows: "It is agreed that in no event shall this insurance company have any right of recovery against the Village." The Contractor agrees to cooperate fully with the insurance company or companies in carrying out the provisions and conditions of all policies applicable to Work to be done, as well as all rules and recommendations of such company or companies in regard to accident prevention, reports and audits. The Contractor further agrees that notice of every accident will not only be reported immediately to the Village, and also to such insurance company or companies.

**§11.1.12** Every subcontract shall contain complete insurance provisions identical to Sections included herein for the benefit, protection, and indemnification of the Contractor and the Village.

## **§11.2 [RESERVED]**

### **§11.3 Waivers of Subrogation**

**§11.3.1** Except for losses due to the negligence or breach of contract of a, subcontractor, sub-subcontractor or persons they are responsible for, the Village and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other for compensation for damages caused by fire or other perils to the extent paid for by the Village's Builder's Risk insurance, Village's property insurance, or by the Contractor's liability insurance obtained pursuant to this Article, except such rights as they have to proceeds of such insurance held by the Village and the Contractor. This shall not act as a waiver of any other rights or remedies under the Contract Documents.

**§11.3.2** A loss insured under the property or Builder's Risk insurance for the Property shall be adjusted by the Village, using reasonable discretion and not as a fiduciary for Contractor or any other interested party, and made payable to the Village for the insureds, as their interest may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate written agreements where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§11.3.3** The Village shall not be required to give bond for performance of the Village's duties. The Village may deposit in a separate account insurance proceeds so received, which the Village shall distribute in accordance with the terms of any settlement reached with the Builder's Risk insurer. If after such loss no other special agreement is made and unless the Village terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor in accordance with this Agreement and paid for by Village.

## **§11.4 Performance of Bond and Payment of Bond**

**§11.4.1** Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations within three (3) days of the Effective Date of the Contract.

**§11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§11.4.3 Performance and Payment Bonds.** Contractor shall provide the Village with a 100% performance bond in the amount of the Contract Sum utilizing the form provided with these Contract Documents which shall incorporate the obligation of Surety referenced in this Contract and an unconditional payment bond in accordance with Section 255.05, Florida Statutes, in the amount of the Contract Sum covering the faithful performance of the Contract and payment of all obligations thereunder. The bonds shall be executed by a surety that is licensed in Florida and listed in the Federal Register (Department of the Treasury, Circular 570) and shall remain in effect as required by law and the Contract Documents. The bonds shall be effective as of the Commencement Date as defined in the Contract and shall cover all Work and obligations under the Contract Documents.

**§11.4.4** The Contractor shall, upon approval of the bonds by the Village, record the bonds with the County Clerk's Office of the county in which the work is to be performed and promptly furnish the Village with a certified copy of the recorded bonds.

**§11.4.5** Both the payment bond and the performance bond under this Article shall display the Surety's bond number, and attach a rider containing the following provisions:

- .1** Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any other addition, alteration, change, extension of time, backcharge, or other modification of the Contract Documents, or forbearance on the part of either Village or Contractor to the other, shall not release Surety of its obligations hereunder, and notice to the surety of such matters is hereby waived.

- .2 Surety hereby stipulates and agrees that the obligation of said Surety and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or of the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any part thereof, or of any Work to be performed or any moneys due or to become due thereunder. Surety expressly consents to the payment provisions as provided in this Contract. In any event, even if the Surety fails to include such language in its bond, by incorporating this Contract into the Payment and Performance Bonds furnished for this Project, Surety agrees to the provisions of this Article and the provisions of § 11.4.4.
- .3 Surety hereby agrees that if, after the 14 day Notice to the Contractor and Surety, the Contractor and Surety do not cure the default as provided in this Section, then the Surety, in addition to the Contractor, without the need to terminate the Contractor, shall be liable to Village for any damages the Village may sustain and be entitled to pursuant to the Contract and the bonds. No further Notices shall be required by Village.

**§11.4.6** Should Contractor fail to perform any of its obligations under this Contract, the Village shall give the Contractor and Surety a fourteen day (14) Notice of Default. After receipt of the 14 day Notice provided herein, the Contractor and Surety shall have the right and opportunity to cure the default(s). If, after the 14 day Notice, the Contractor and Surety do not cure the default as provided in this Section, then the Surety, in addition to the Contractor, without the need to terminate the Contractor, shall be liable to Village for any damages the Village may sustain and be entitled to pursuant to this Contract and the bonds. No further Notices shall be required by Village.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§12.1 Uncovering of Work**

**§12.1.1** If a portion of the Work is covered contrary to the A/E Professionals', Owner's Representative's, or Village's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the A/E Professionals, Owner's Representative, or Village, be uncovered for the A/E Professionals', Owner's Representative's, or Village's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§12.1.2** If a portion of the Work has been covered that the A/E Professionals, Owner's Representative, or Village has not specifically requested to examine prior to its being covered, the A/E Professionals, Owner's Representative, or Village may request to see such Work and it shall be uncovered by the Contractor. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### **§12.2 Correction of Work**

#### **§12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Owner's Representative or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's Representative's services and expenses made necessary thereby, including any attorneys' fees incurred by the Village, shall be at the Contractor's expense. The obligations of this Section shall survive completion and final payment or termination of the Agreement.

#### **§12.2.2 After Substantial Completion**

**§12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within three (3) years after the date of Substantial Completion of all the Work or any longer period provided in an Extended Warranty, is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Village to do so. The Village shall give such notice promptly after discovery of the condition. If the Contractor fails to commence correction of nonconforming Work within five (5) business days after receipt of prior reasonable notice by the Village, the Village may correct the nonconforming Work in accordance with the Contract Documents. Contractor is obligated to reimburse Village for all corrective costs and damages incurred as a result of Contractor's failure to correct nonconforming Work. This obligation shall survive completion and final payment or termination of the Contract.

**§12.2.2.2** The three-year period for correction of Work or any longer period provided in an Extended Warranty shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§12.2.2.3** The three-year period for correction of Work or any longer period provided in an Extended Warranty shall be extended for corrected Work performed by the Contractor pursuant to this Section 12.2.

**§12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Village.

**§12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Village or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the three-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **§12.3 Acceptance of Nonconforming Work**

If the Village prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Village may do so in writing instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. If payments due to the Contractor are insufficient to cover the adjustment, Contractor shall pay the difference to the Village.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§13.1 Governing Law**

The Agreement and the Contract Documents shall be governed by the law of the State of Florida without regard to conflicts of law provisions.

### **§13.2 Successors and Assigns**

**§13.2.1** The Village and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### **§13.3 Rights and Remedies**

**§13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§13.3.2** No action or failure to act by the Village, Owner's Representative, A/E Professionals, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing. The invalidity of any part or provisions of the Contract Documents shall not affect the validity or enforceability of any other part of the Contract Documents. Any waiver by the Village of any breach of the Contract Documents shall not be held to be a waiver of any other or subsequent breach, and any waiver by the Village of any right to terminate the Contract shall not be held to be a waiver of any breach of the Contract Documents, but the Village retains all its rights to recover damages therefor.

### **§13.4 Tests and Inspections**

**§13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

approvals with an independent testing laboratory or entity acceptable to the Village, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Owner's Representative timely notice of when and where tests and inspections are to be made so that the Owner's Representative may be present for such procedures.

**§13.4.2** If the Owner's Representative, Village, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Village may on its own arrange for such additional testing, inspection, or approval, or the Owner's Representative will, upon written authorization from the Village, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Village, and the Contractor shall give timely notice to the Owner's Representative of when and where tests and inspections are to be made so that the Owner's Representative may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Village's expense.

**§13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures, additional testing, and compensation for the services and expenses of the Owner's Representative, Village's consultants, including special and threshold inspectors or other engineers, shall be at the Contractor's expense. Village may deduct such amounts from the balance due the Contractor.

**§13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner's Representative.

**§13.4.5** If the Owner's Representative is to observe tests, inspections, or approvals required by the Contract Documents, the Owner's Representative will do so promptly and, where practicable, at the normal place of testing.

**§13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### **§13.5 Time Limits on Claims**

The Village and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract within the time period specified by applicable law.

### **§13.6 Permit Revisions Timelines**

It shall be incumbent upon the Contractor to have permit revisions issued and executed by the Building Department in a timely manner so as not to delay the construction process, and the Contractor shall bear the cost of such revisions.

### **§13.7 Work Hours**

The Construction work Saturdays, Sundays or after normal hours, if approved, shall be at no additional cost to the Village.

### **§13.8 Maintenance**

Various materials and finishes of materials exposed to the Florida environment will begin to deteriorate over time. Materials such as rooftop equipment, piping, conduits, etc., as well as finishes for stainless steel, wood, aluminum, etc. are all subject to deterioration. The Contractor is to provide the Village a maintenance program for various products on the Project. All maintenance required prior to Substantial Completion or partial occupancy or Turnover will be performed by Contractor as part of the Work. Contractor shall not be responsible for maintenance following Substantial Completion or partial occupancy or Turnover.

### **§13.9 Maintenance Records**

After Substantial Completion (but before Final Payment) or upon occupancy, the Contractor shall meet with and arrange for each installer of parts of Work requiring regular maintenance to meet with Village's representative and the property manager(s) for the Project or other individuals as may be designated by Village, at the Project site, to provide basic instructions needed for proper operation and maintenance of that part of Work. Instructions by manufacturer's representatives are required where installers are not experts in operating/maintenance procedures, or as specified in the Construction Documents. For operational equipment, installers shall demonstrate startup, shut-down, emergency operations, noise and vibration adjustments, safety, economy/efficiency adjustments, and other applicable operations, and shall review maintenance and operating instructions which are required to be performed in

order to maintain in force applicable warranties, guaranties and bonds. Completion of all training is an express condition precedent to Final Payment.

### **§13.10 No Agency Relationship**

It is understood that Contractor is not herein appointed the agent of Village but is and shall remain an independent contractor. Accordingly, all aspects of Contractor's performance of the Agreement, except as specifically provided in the Agreement, shall be under the direction and control of Contractor.

### **§13.11 Third Parties**

No provision in the Agreement shall create or give to third parties any claim or right of action against Village.

### **§13.12 Place of Work**

Contractor, under regulations prescribed by Village, shall use only established roadways, and such temporary roadways as may be approved by Village. When materials or equipment are transported in performance of the Work, vehicles shall not be loaded beyond the load limit as established by federal, state or local law regulations. When it is necessary to cross curbing and/or sidewalks, protection against damage shall be provided by Contractor, and any damage caused will be immediately repaired by Contractor, at Contractor's cost, and if not repaired by Contractor within five days after notice in writing, Village may make such repairs and charge the amount of such repairs to the Contractor. All existing sidewalks, curbs and pavements disturbed, broken, removed, or otherwise damaged by Contractor, during the performance of the Work under the Agreement, shall be replaced by the Contractor at its sole expense. Replaced or repaired sidewalks, curbs, and pavements shall be constructed of similar materials and by similar methods to the original construction. Replaced or repaired sidewalks, curbs and pavement shall be smoothly blended into the existing Work and shall not present depressions or humps and shall be acceptable to Village.

### **§13.13 Value Engineering.**

Contractor will assist the Village and A/E Professionals in suggesting alternates to the items specified in an exhibit attached hereto to be incorporated in the Contract Documents, but the ultimate decision is that of the Village and A/E Professionals to determine the cost, suitability, fitness and appropriateness for use of the items suggested by the Contractor. All cost savings attributable to Value Engineering shall belong to Village.

**§13.14** [OMITTED]

**§13.15** [OMITTED]

**§13.16** [OMITTED]

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§14.1 Termination by the Village for Cause**

**§14.1.1** The Village may terminate the Contract if the Contractor

- .1** refuses or fails to supply enough properly skilled workers or proper materials;
- .2** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3** disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4** admits in writing its inability to pay its debts generally as they become due, or if the Contractor makes a general assignment for the benefit of its creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of its bankruptcy or insolvency;
- .5** submits an Application for Payment, sworn statement, waiver of lien, affidavit or document that is intentionally falsely filed; or
- .6** has a construction lien filed against any part of the Work or the site of the project for work performed under the Agreement for which the Contractor has been paid by the Village and not promptly bonded or insured over by the Contractor in accordance with Florida Statutes after five (5) days written notice to the Contractor; or
- .7** otherwise is in substantial breach of a provision of the Contract Documents;

**§14.1.2** When any of the reasons described in Section 14.1.1 exist, the Village, may, without prejudice to any other remedy it may have and after giving the Contractor seven (7) day's written notice, terminate the Agreement and take

possession of the site and all materials, tools, equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Village may deem expedient.

**§14.1.3** When the Village terminates the Contract for one of the reasons stated in Section 14.1.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§14.1.4** The Village's right to terminate the Contract, pursuant to this Section, shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant thereto or at law or in equity.

**§14.1.5** Should the Village Terminate for Cause and should a court of competent jurisdiction subsequently determine that the Termination for Cause was improper, then in that event, the Termination shall be considered a Termination for Convenience as set forth in Paragraph 14.3 below.

**§ 14.2.6 Continuing Access to Digital Data.** Upon termination of Contractor for cause, Contractor shall assign to the Village all permits, shop drawings, submittals, and drawings software licenses Contractor has obtained or is using with regard to this Project and all databases related to this Project, including but not limited to use of the Building Information Modeling (if any) and all digital data for this Project and all construction management and financial software (such as Procore, or other software used by Contractor) (the "Project Management and Financial Software"), all of which the Village can continue to use following termination of this Agreement, upon payment of appropriate licensing fees, costs of compilation, costs of reproduction, and other direct related costs incurred. Upon termination of Contractor for cause, Contractor shall make available to the Village fully-functional and complete access to all modules of its Project Management and Financial Software platform. All data contained in such Project Management and Financial Software platform shall remain intact as kept during the ordinary course of business even after termination. Contractor is precluded from modifying or deleting any digital data therein. This provision expressly survives termination of this Agreement. Contractor shall work with the Village and assist the Village in all related transfers and assignments. Contractor is obligated to provide for and facilitate a smooth transfer and assignment of all information and documents listed above.

#### **§14.2 Suspension by the Village for Convenience**

**§14.2.1** The Village may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Village may determine.

**§14.2.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent that the suspension, delay, or interruption was due to a government shut down due to the Pandemics, Military Conflicts, or the Tariffs. In such event, the suspension shall be treated as a non-compensable extension, wherein the Contract Time shall be extended for the duration of the shutdown, but no additional compensation shall be due Contractor. No adjustment shall be made to the Contract Sum or Contract Time, due to a suspension, delay, or interruption to the extent:

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### **§14.3 Termination by the Village for Convenience**

**§14.3.1** The Village may within seven (7) calendar day's prior written notice terminate the Contract for the Village's convenience and without cause.

**§14.3.2** Upon receipt of notice from the Village of such termination for the Village's convenience, the Contractor shall

- .1 cease operations as directed by the Village in the notice;
- .2 take actions necessary, or that the Village may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§14.3.3** In case of such termination for the Village's convenience, the Village shall pay the Contractor for Work

properly executed; costs incurred by reason of the termination. In the event of Termination for Convenience, the Village shall not be liable to the Contractor for lost profits on any Work not performed, home office overhead, or any other type of consequential, special or indirect damages and Contractor hereby waives same. All costs of performance claimed by Contractor must be fully supported by the Contractor's invoices and other documentation acceptable to the Village, and shall be subject to the Village's audit. The Contractor shall make its records available at reasonable times and places for the Village's audit. Payments to the Contractor shall be reduced by any setoffs, damages, claims to which the Village is entitled under this Contract.

**§14.3.4** The Village's right to terminate the Contract shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant thereto or at law or in equity.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§15.1 Claims**

#### **§15.1.1 Definition**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Village and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Village to file a Claim in order to impose liquidated damages in accordance with the Contract Documents. Submittal of a request for Change Order shall not be considered notice of a Claim required by this Article.

#### **§15.1.2 Time Limits on Claims**

The Village and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Village and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.

#### **§15.1.3 Notice of Claims**

**§15.1.3.1** Claims by either the Village or Contractor shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Owner's Representative. Claims by the Contractor for an increase in the Contract Sum or the Contract Time must be made within five (5) days after occurrence of the event giving rise to such Claim.

**§15.1.3.2** Claims by either the Village or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### **§15.1.4 Continuing Contract Performance**

**§15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Village shall continue to make payments in accordance with the Contract Documents.

**§15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The A/E Professionals will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### **§15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§15.1.6 Claims for Additional Time**

**§15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include a Time Impact Analysis and probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§15.1.6.2** If exceptional and unusual adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

### **§15.1.7 Waiver of Claims for Consequential Damages**

The Contractor waives Claims against the Village for consequential damages arising out of or relating to this Contract. This waiver includes damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work actually performed by the Contractor.

This waiver is applicable, without limitation, to all of Contractor's consequential damages due to Village's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### **§15.2 Initial Decision**

**§15.2.1** Claims shall be referred to the Initial Decision Maker for initial decision. The A/E Professionals will serve as the Initial Decision Maker, unless otherwise indicated in the Contract. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to resolution of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Village. Contractor must continue with its Work when a Claim is pending before the Initial Decision Maker.

**§15.2.2** The Initial Decision Maker will review Claims and within ten (10) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision.

**§15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Owner's Representative, of any change in the Contract Sum or Contract Time or both. The initial decision is not binding on the parties and is subject to binding dispute resolution.

**§15.2.6** In the event of a Claim against the Contractor, the Village may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Village may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

### **§15.3 Mediation**

**§15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in the Contract Documents, shall be subject to mediation as a condition precedent to binding dispute resolution.

**§15.3.2** In the event that the parties agree in writing to mediation, such mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the

date of the Agreement. The written agreement to mediate shall be filed with the person or entity administering the mediation. If the mediation process is initiated concurrently with the filing of binding dispute resolution, including litigation, proceedings, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**§15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

**§15.3.4** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### **§15.3.5 Litigation**

Litigation of Claims, disputes or other matters in question between the Village and Contractor arising out of or relating to this Contract or breach thereof, which are not resolved by mediation, shall be subject to and decided by litigation exclusively in the state courts of the 11<sup>th</sup> Judicial Circuit of Miami-Dade County, Florida. Contractor and Village consent to the venue of the State Courts of Miami-Dade County, Florida and specifically recognize and acknowledge the waiver of any right to remove any action to federal court on the basis of diversity jurisdiction or on any other basis.

**§15.3.6** In the event of any dispute arising out of or related to this Contract, the prevailing party shall be entitled to recover the cost of such action including reasonable attorneys' fees and paralegal fees for all trial and appellate levels. In any suit, action, or other proceeding, including bankruptcy, arising out of or in any manner relating to the Contract Documents, including without limitation, (i) the enforcement or interpretation of a party's rights or obligations under the Contract Documents (whether in contract, tort, or both), or (ii) the declaration of any rights or obligations under the Contract Documents, the successful or prevailing party, as determined by the court, shall be entitled to recover from the losing party, as determined by the court, reasonable attorneys' fees, paralegal fees, and disbursements (including disbursements which would not otherwise be taxable as cost in the proceeding) and expert witness fees. All references in the Contract Documents to attorneys' fees shall be deemed to include all attorney and paralegal fees as well as through all post-judgment and appellate levels and in connection with collection, and bankruptcy proceedings. In addition, the prevailing party shall be entitled to recover from the non-prevailing party, all litigation costs associated with discovery, processing, management, hosting, and production of Electronically Stored Information ("ESI").

## **§16 Miscellaneous**

### **§16.1 Modification**

No change or modification of the Contract shall be valid unless in writing and signed by all parties hereto, excluding Construction Change Directives which do not require the signature of the Contractor. No waiver of any of the provisions of this Contract shall be valid unless in writing and signed by the party against whom it is sought to be enforced.

### **§16.2 Rights and Remedies**

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not in limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. All indemnities, representations, and waivers made by Contractor in favor of Village shall survive completion of the Work, the making of final payment, and any termination of the Agreement.

### **§16.4 Severability and Waiver**

The partial or complete invalidity of any one or more provisions of this Contract or any portion of the Contract Documents shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions the Contract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.