SECTION III

GENERAL CONDITIONS

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# DEFINITIONS

*Addenda*  
Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the contract documents.

*Agent*Architect, engineer or other outside agency, consultant or person acting on behalf of the City.

*Agreement*The written contract between Owner and Contractor covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

*Application for Payment*The form accepted by Engineer which is to be used by Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

Approve  
The word approve is defined to mean satisfactory review of the material, equipment, or methods for general compliance with the design concepts and with the information given in the Contract Documents. It does not imply a responsibility on the part of the Engineer to verify in every detail conformance with the Drawings and Specifications.

*Bid*The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the work to be performed.

*Bidding Documents*The advertisement or invitation to Bid, instructions to bidders, the Bid form, and the proposed Contact Documents (including all Addenda issued prior to receipt of Bids).

*Bonds*Performance and payment bonds and other instruments of security.

*Change Order*A written order to Contractor signed by Owner and Contractor authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued on or after the effective date of the Agreement.

*City*The City of Clearwater, Pinellas County, Florida.

*Construction Inspector*A person who is the authorized representative of the Construction Manager and inspects City construction projects in order to ensure the Contractor’s work complies with the intent of the Contract Documents.

*Construction Manager*The person who is typically in responsible charge of City construction projects. The Construction Manager assumes responsibility for the management of construction contracts at the Preconstruction Conference. The Construction Manager chairs the Preconstruction Conference and is the authority on any disputes or decisions regarding contract administration and performance. The Construction Manager typically acts as the Owner’s Representative during construction.

*Contract Documents*The Agreement, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the bid and any post-Bid documentation submitted prior to the execution of the Agreement) when attached as an exhibit to the Agreement, the Bonds, Instructions to Bidders, these General Conditions, any Supplementary Conditions, the Specifications and the Drawings, any other exhibits identified in the Agreement, together with all Modifications issued after the execution of the Agreement.

*Contract Price*The Contract price constitutes the total compensation (subject to authorized adjustments) payable by Owner to Contractor for performing the Work.

*Contract Time*The number of days or the date stated in the Agreement for the completion of the Work.

*Contractor*The Person with whom the Owner has entered into the Agreement. For the purposes of this contract, the person, firm, or corporation with whom this contract or agreement has been made by the City of Clearwater or its duly authorized representative.

*Critical Path Method Construction Schedule (CPM)*A graphic format construction schedule that displays construction activities as they relate to one another for the purpose of identifying the most efficient way to perform the work in a timely manner. The critical path identifies which activity is critical to the execution of the schedule.

*Day*A calendar day of twenty-four (24) hours measured from midnight to the next midnight.

*Defective*An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Engineers recommendation of final payment.

*Drawings*The drawings, which will be identified in Technical Specifications or the Agreement, which show the character and scope of the Work to be performed and which have been prepared or approved by Engineer and are referred to in the contract documents. Shop drawings are not Drawings as so defined.

*Engineer*The duly appointed representative of the City Manager of the City of Clearwater. For the purposes of this contract, the City Engineer of the City of Clearwater, Pinellas County, Florida, or his authorized representative. For certain projects, the Engineer may serve as the Owner’s Representative during construction.

*Engineer's Consultant*A Person having a contract with Engineer to furnish services as Engineer's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

*F.D.O.T. Specifications*The Standard Specifications for Road and Bridge Construction as issued by the Florida Department of Transportation (latest English edition).

*Furnish*The words "furnish", "furnish and install", "install", and "provide" or words of similar meaning shall be interpreted, unless otherwise specifically stated, to mean "furnish and install complete in place and ready for service".

*Inspection*The term "inspection" and the act of inspecting means examination of construction to ensure that it conforms to the design concept expressed in the Drawings and Specifications. These terms shall not be construed to mean supervision, superintending, or overseeing.

*Laws and Regulations*Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any kind of governmental bodies, agencies, authorities, and courts having jurisdiction.

*Liens*Liens, charges, security interests or encumbrances upon real property or personal property.

*Milestone*A principal event specified in the contract Documents relating to an intermediate completion date or time prior to the final completion date.

*Notice to Proceed (NTP)*A written notice given by the Owner to the Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform his obligations under the Contract Documents.

*Owner*The City of Clearwater, Florida. For the purposes of this contract, the person who is the City’s authorized representative from the City’s Department with whom will be responsible for the maintenance and operation of the Work once the Work is completed. For certain projects, a designee of the Owner may serve as the Owner’s Representative during construction.

*Owner’s Representative*Designee of the Owner with authority to act on behalf of the Owner during construction.

*Person*A natural person, or a corporation, partnership, firm, organization, or other artificial entity.

*Project*The total construction of which the Work to be provided under the Contract Documents may be the whole or a part as indicated elsewhere in the Contract Documents.

*Partial Utilization*Use by Owner of a substantially completed part of the Work for the purpose for which is intended (or a related purpose) prior to Final Completion of all the Work.

*Representative of Contractor*The Contractor shall assign a responsible person or persons, one of whom shall be at the construction site at all times, that work is progressing. The names and positions of these persons shall be submitted to the City Engineer at the time of the pre-construction conference. This person or persons shall not be changed without written approval of City Engineer.

*Request for Information (RFI)*An official written request for clarification of the intent of the contract documents from the Contractor to the Engineer.

*Shop Drawing*All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by Contractor to illustrate material or equipment for some portion of the Work.

*Specifications*Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

*Subcontractor*A person having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

*Substantial Completion*The Work (or a specified part thereof) which has progressed to the point where, in the opinion of Engineer, as evidenced by Engineer's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by the Engineer's recommendation of final payment. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

*Supplementary Conditions*The part of the Contract which amends or supplements these General Conditions.

*Supplier*A manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by the Contractor.

*Surety*Any person, firm or corporation which is bound with Contractor, and which engages to be responsible for Contractor and his acceptable performance of the Work by a Bid, Performance or Payment Bond.

*Underground Facilities*All pipelines, conduits, ducts, cables, wires manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal or treatment, traffic or other control systems or water.

*Unit Price Work*Work to be paid for on the basis of unit prices.

*Work*The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

*Work Change Directive*A written directive to Contractor, issued on or after the Effective Date of the Agreement and signed by the Engineer, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed or emergencies. The Work Change Directive will not change the Contract Price or Contract Time but it is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

# PRELIMINARY MATTERS

## DELIVERY OF BONDS AND CERTIFICATES OF INSURANCE

When Contractor delivers the executed Agreements to the Owner, Contractor shall also deliver to the Owner such Bonds and Certificates of Insurance as Contractor may be required to furnish by this contract.

## COPIES OF DOCUMENTS

Engineer shall furnish to Contractor one (1) copy of Contract Documents for execution. Additional copies will be furnished, upon request, at the cost of reproduction.

## COMMENCEMENT OF CONTRACT TIME/NOTICE TO PROCEED, STARTING THE PROJECT

The Contract Time will commence on the day indicated in the Notice to Proceed. Contractor shall start to perform the work on the date the Contract Time commences to run. No work shall be done at the site prior to the date that the Contract Time commences to run. Pursuant to Section 255.05(1)(b), Florida Statutes, the Notice to Proceed cannot be issued until Contractor provides City with a certified copy of the recorded bond issued by the Pinellas County Clerk of Court.

## BEFORE STARTING CONSTRUCTION

Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error or discrepancy which Contractor may discover; and shall obtain a written interpretation or clarification from Engineer before proceeding with any work effected thereby; however, Contractor shall not be liable to the Owner for failure to report any conflict, error or discrepancy in the Drawings or Specifications, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

No verbal agreement or conversation with any officer, Agent or employee of the Owner or Engineer’s Consultant, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained. Contractor shall not commence any work at any time without approved insurance required by these General Conditions. Failure to obtain this insurance will be the sole responsibility of the Contractor.

## PRECONSTRUCTION CONFERENCE

After Contract has been fully executed and before the start of the Work, the Owner’s Representative shall schedule a preconstruction conference to be attended by Contractor, Engineer, Owner and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the schedule of the Work and general Contract procedures.

The Contractor shall submit to the Owner’s Representative prior to the Notice to Proceed, a color Critical Path Method (CPM) Construction Schedule. This is to be a sequence of events including submittal review and procurement. Notice to Proceed is usually established at the preconstruction conference and such date can be inserted into the schedule at that time. The Contractor shall also submit a Submittal Schedule for review by the Engineer. This is to make sure that the list is complete, and this schedule shall be the basis of a Submittal Log.

The Contractor shall submit to the Owner’s Representative prior to the Notice to Proceed, a completed Emergency Call List, a completed Authorized Signature List, and Verification of Illegal Discharge Construction Site Training.

## PROGRESS MEETINGS

The Contractor is required to attend Progress Meetings. These meetings will be scheduled on a weekly, bi-weekly, or monthly basis depending on the needs of the project. The Contractor shall bring to each meeting an updated submittal log, an updated request for information (RFI) log, a look-ahead schedule to cover the project activity from the current meeting to the next meeting, and all material test reports generated in the same time period.

# CONTRACT DOCUMENTS, INTENT

## INTENT

The Contract Documents comprise the entire Agreement between Owner and the Contractor concerning the Work. They may be altered only by written agreement. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment which may reasonably be inferred from the Contract Documents or from prevailing custom or from trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases, which have a well-known technical or construction industry or trade meaning, are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by the Owner’s Representative. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the code, Laws or Regulation of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code, or Laws or Regulations in effect at the time of opening of Bids except as may be otherwise specifically stated in the Contract Documents. However, no provision of any referenced standard specification, manual or code, whether or not specially incorporated by reference in the responsibilities of Owner or Contractor as set forth in the Contract Documents, shall change the duties and responsibilities of Owner, Contractor, Engineer or Owner’s Representative, or any of their Agents or employees from those set forth in the Contract Documents. Clarifications and interpretations of the Contract shall be issued by the Owner’s Representative. Each and every provision of law and clause required by law to be inserted in these Contract documents shall be deemed to be inserted herein, and they shall be read and enforced as through it were included herein, and if through mistake or otherwise, any such provision is not inserted, or if not correctly inserted, then upon the application of either party, the Contract Documents shall forthwith be physically amended to make such insertion.

## REPORTING AND RESOLVING DISCREPANCIES

If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier, Contractor shall report it to the Owner’s Representative in writing at once, and Contractor shall not proceed with the Work affected thereby (except in an emergency) until an amendment or supplement to Contract Documents has been issued by one of the methods provided in these General Specifications, provided however, that Contractor shall not be liable to Owner, or Owner’s Representative for failure to report any such conflict, error, ambiguity or discrepancy unless Contractor knew or reasonably should have known thereof.

# AVAILABILITY OF LANDS, SUBSURFACE AND PHYSICAL CONDITIONS, REFERENCE POINTS

## AVAILABILITY OF LANDS

The Owner shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be Performed, rights-of-way, easements, rights of entry for access thereto, and such other lands which are designated for the use of Contractor. The Owner shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which Contractor will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the Owner, unless otherwise provided in the Contract Documents.

## INVESTIGATIONS AND REPORTS

Reference is made to the Supplementary Conditions and Technical Specifications for identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which have been relied upon by Engineer in preparation of the Drawings and Specifications. Such reports are not guaranteed as to accuracy or completeness and are not part of the Contract Documents. The Contractor shall promptly notify the Owner’s Representative in writing of any subsurface or latent physical conditions at the site, or in an existing structure, differing materially from those indicated or referred to in the Contract Documents. The Engineer will promptly review those conditions and advise if further investigation or tests are necessary. Owner or Engineer shall obtain the necessary additional investigations and tests and furnish copies to the Engineer and Contractor. If Engineer finds that the results of such investigations or tests indicate that there are subsurface or latent physical conditions, which differ materially from those, indicated in the contract Documents, and which could not reasonably have been anticipated by Contractor, a work change, or Change Order will be issued incorporating the necessary revisions.

## PHYSICAL CONDITIONS, UNDERGROUND FACILITIES

The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities or by others. Unless otherwise expressly provided in the Contract Documents, Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and the cost of all the following will be included in the Contract Price and Contractor shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work. The Contractor is required to call the Sunshine State One Call of Florida prior to any excavation per State regulations and to notify any utility owners who are not a member of the Sunshine State One Call of Florida prior to any excavation. The Sunshine State One Call of Florida is an agency for the protection and location of utilities prior to any excavation and contact number is available in local telephone directory.

## REFERENCE POINTS

The Engineer shall provide engineering surveys to establish reference points for construction, which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, unless otherwise noted in the Contract, shall protect, and preserve the established reference points and shall make no changes or relocations without the prior written approval of the Owner and Engineer. The Contractor shall report to Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations and shall be responsible for the accurate replacement or relocation of such reference points by a surveyor licensed in the State of Florida. The Contractor is referred to the Technical Specifications for more specific information regarding the provision of construction surveys. If a City’s survey crew is assigned to the project and there is excessive stake replacement caused by negligence of Contractor's forces after initial line and grade have been set, as determined by the Engineer, the Contractor will be charged at the rate of $200.00 per hour. Time shall be computed for actual time on the project. All time shall be computed in one-hour increments with a minimum charge of one hour.

# BONDS AND INSURANCE

## PERFORMANCE AND PAYMENT BOND/CONTRACT BOND

The Contractor shall furnish a Performance and Payment Bond pursuant to Section 255.05, Florida Statutes in an amount equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. This bond shall remain in effect at least one year after the date when final payment becomes due unless a longer period of time is prescribed by laws and regulations or by the Contract Documents. Contractor shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the form prescribed by the Contract Documents in Section V and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of such agents’ authority to act. All bonds shall be deemed to contain all of the Conditions of Section 255.05, Florida Statutes, even if such language is not directly contained within the bond and the Surety shall be licensed and qualified to do business in the State of Florida. Owner reserves the right to reject any surety. If the Surety on any Bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of these Contract Documents, the Contractor shall within five days after notice thereof substitute another Bond and surety, both of which must be acceptable to Owner.

## INSURANCE REQUIREMENTS

The Contractor shall, at its own cost and expense, acquire and maintain (and cause any Subcontractors, representatives or agents to acquire and maintain) during the term with the City, sufficient insurance to adequately protect the respective interests of the parties. Coverage shall be obtained with a carrier having an AM Best Rating of A-VII or better. In addition, the City has the right to review the Contractor’s deductible or self-insured retention and to require that it be reduced or eliminated.

Specifically, the Contractor must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum four (4) year tail following the termination or expiration of this Agreement.

The following insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

### COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial General Liability Insurance coverage, including but not limited to, premises operations, products/completed operations, products liability, contractual liability, advertising injury, personal injury, death, and property damage in the minimum amount of$1,000,000 (one million dollars) per occurrence and $2,000,000 (two million dollars) general aggregate.

### COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

Commercial Automobile Liability Insurance coverage for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of $1,000,000(one million dollars)combined single limit.

### WORKERS’ COMPENSATION AND EMPLOYER’S LIABILITY INSURANCE

Statutory Workers’ Compensation Insurance coverage in accordance with the laws of the State of Florida, and Employer’s Liability Insurance in the minimum amount of $100,000 (one hundred thousand dollars) each employee each accident, $100,000 (one hundred thousand dollars) each employee by disease and $500,000 (five hundred thousand dollars) aggregate by disease with benefits afforded under the laws of the State of Florida. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen’s and Harbor Worker’s Act coverage where applicable. Coverage must be applicable to Employees, Contractors, Subcontractors, and Volunteers, if any.

### PROFESSIONAL LIABILITY/MALPRACTICE/ERRORS OR OMISSIONS INSURANCE

Professional Liability/Malpractice/Errors or Omissions Insurance coverage appropriate for the type of business engaged in by the Contractor with minimum limits of $1,000,000 (one million dollars) per occurrence. If a claims-made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims-made coverage, unless prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great a duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provides a retroactive date no later than the inception date of claims-made coverage.

### CONTRACTOR’S EQUIPMENT/INLAND MARINE/PROPERTY INSURANCE

If Contractor is using its own property in connection with the performance of its obligations under this Agreement, then Contractor’s Equipment–Inland Marine Insurance and/or Property Insurance on an “All Risks” basis with replacement cost coverage for property and equipment in the care, custody and control of others is recommended. The City is not responsible for Contractor’s (or any Subcontractors, Representatives, or Agents) equipment or property.

### BUILDER’S RISK INSURANCE

The City will provide at its expense Builder’s Risk Insurance for the project to cover all risks of loss in complete and full value of the project. The Contractor agrees to cooperate in a timely manner with providing any information or documentation required for the application and by the carrier as the project proceeds.

## OTHER INSURANCE PROVISIONS

Upon approval of this Agreement by City Council, and then annually upon the anniversary date(s) of the insurance policy’s renewal date(s) for as long as this Agreement remains in effect, the Contractor will furnish the City with a Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable endorsements) evidencing all of the coverage set forth above and naming the City as an “Additional Insured.” In addition, when requested in writing from the City, Contractor will provide the City with certified copies of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows:

Attn: Contract and Procurement Specialist  
City of Clearwater, Public Works Department  
PO Box 4748  
Clearwater FL 33758-4748

1. The **Description** (of Operations/Locations/Vehicles) should specify Project Name and Project Number.
2. The Contractor shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
3. Contractor’s insurance as outlined above shall be primary and non-contributory coverage for Contractor’s negligence.
4. The Contractor reserves the right to appoint legal counsel to provide for the Contractor’s defense, for any and all claims that may arise related to Agreement, work performed under this Agreement, or to Contractor’s design, equipment, or service. The Contractor agrees that the City shall not be liable to reimburse Contractor for any legal fees or costs as a result of Contractor providing its defense as contemplated herein.

The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the City, and the City’s failure to request evidence of this insurance shall not be construed as a waiver of Contractor’s (or Subcontractors, Representatives, or Agents) obligation to provide the insurance coverage specified.

## WAIVER OF RIGHTS

The Owner and Contractor intend that all policies purchased in accordance with Article on Insurance will protect the Owner, Contractor, Subcontractors, Engineer, Engineer's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insured or additional insured in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insured or additional insured thereunder, the Owner and Contractor waive all rights against each other and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the work; and, in addition, waive all such rights against Subcontractors, Engineer, Engineer's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insured or additional insured under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance otherwise payable under any policy so issued. In addition, the Owner waives all rights against Contractor, Subcontractors, Engineer, Engineer's Consultant and the officers, directors, employees and agents of any of them for: (i) loss due to business interruption, loss of use or other consequential loss extending beyond direct physical loss or damage to the Owner property or the Work caused by, arising out of or resulting from fire or other peril, whether or not insured by the Owner and; (ii) loss or damage to the completed Project or part thereof caused by, arising out of or resulting from fire or other insured peril covered by any property insurance maintained on the completed Project or part thereof by the Owner during partial utilization, after substantial completion or after final payment.

# CONTRACTOR’S RESPONSIBILITIES

## SUPERVISION AND SUPERINTENDENCE

The Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Contractor shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

The Contractor shall be responsible to see that the completed work complies accurately with the Contract Documents. The Contractor shall keep on the work at all times during its progress a competent resident superintendent, who shall not be replaced without notice to the Owner’s Representative except under extraordinary circumstances. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of Contractor. All communications to the superintendent shall be as binding as if given to Contractor. The Contractor’s Superintendent shall keep a mobile cell phone on his person, so he can be contacted whenever necessary.

The Contractor shall employ only competent persons to do the work and whenever the Owner’s Representative shall notify Contractor, in writing, that any person on the work appears to be incompetent, unfaithful, disorderly, disrespectful or otherwise unsatisfactory, such person shall be removed from the project and shall not again be employed on it except with the written consent of the Owner’s Representative. The Contractor represents the City of Clearwater and shall conduct themselves in a professional manner to the public at all times.

The Contractor shall reimburse Owner for additional engineering and inspection costs incurred as a result of overtime work in excess of the regular working hours or on the Owner normally approved holidays. At such times when Inspector overtime is required, the Contractor shall sign an overtime slip documenting such hours and the Contractor shall be provided with a copy for his records. At the end of the project and prior to payment of withheld retainage funds, the Contractor shall deliver to the Owner a check made out to the City of Clearwater for full reimbursement of all Inspector overtime hours. Withheld retainage shall not be released until the Owner has received this check. The minimum number of chargeable hours for inspection costs on weekends or holidays shall be four hours. The cost of overtime inspection per hour shall be $80.00 per hour.

The Contractor shall provide and maintain in a neat and sanitary condition, such sanitary accommodations for the use of Contractor's employees as may be necessary to comply with the requirements of Laws and Regulations and the Engineer.

## LABOR, MATERIALS AND EQUIPMENT

The Contractor shall provide competent, suitably qualified personnel to survey, lay out and construct the work as required by the Contract Documents. The Contractor shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all work at the site shall be performed during regular working hours. Contractor shall adhere to the Community Development Code, Section 3-1508, regarding noise restrictions from 6:00 p.m. to 7:00 a.m. any day and all-day Sunday. The Contractor will not permit overtime work or the performance of work on Saturday, Sunday, or any legal holiday without Owner’s consent given after prior notice to Engineer.

Unless otherwise specified in the General Requirements, the Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

All materials and equipment installed in the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by Engineer, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the quality of materials and equipment. The Contractor shall provide suitable and secure storage for all materials to be used in the Work so that their quality shall not be impaired or injured. Materials that are improperly stored may be rejected by the Engineer without testing.

All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier, or distributor, except as otherwise provided in the Contract Documents.

The City of Clearwater, at its sole discretion, reserves the right to purchase major equipment or materials to be incorporated into the Work under the Owner Direct Purchase (ODP) Option, per Section III, Article 21. In such an event, the Contractor shall cooperate and assist the Owner, at no additional cost, to implement the ODP documents and procedures.

## SUBSTITUTES AND "OR EQUAL" ITEMS

Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent or "or equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be accepted by Engineer. If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer for approval. If in the Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or equal" item, it may be considered as a proposed substitute item. Contractor shall submit sufficient information as required by the Engineer to allow the Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and is an acceptable substitute, therefore. Request for review of proposed substitute and "or equal" will not be accepted by Engineer from anyone other than Contractor.

Request for substitute and "or equal" items by the Contractor must be submitted in writing to Owner’s Representative and will contain all the information as Engineer deems necessary to make a determination. Request for substitute shall identify why a substitute is submitted and include advantages to the Owner. All data provided by Contractor in support of any proposed substitute or "or equal" item will be at Contractor's expense. The Engineer will be allowed a reasonable time to evaluate each proposal or submittal made per this paragraph. The Engineer will be sole judge of acceptability.

## SUBCONTRACTORS, SUPPLIERS AND OTHERS

The Contractor shall deliver to the Owner’s Representative before or at the preconstruction conference a list of all Subcontractors, suppliers and other persons and organizations proposed by the Contractor for Work to be performed on the Project. The Contractor shall include with this list the qualifications and references for each Subcontractor, supplier or other person and organization for review and approval. Any changes to this list must be submitted to the Owner’s Representative for approval prior to the substitution of any Subcontractors, suppliers or other persons and organizations before performing any Work on the Project for the Contractor.

The Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers and other persons performing or furnishing any of the work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person any contractual relationship between Owner or Engineer and any Subcontractor, Supplier or other person, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers and other persons performing or furnishing any of the work under a direct or indirect contract with Contractor. Contractor shall require all Subcontractors, Suppliers and such other persons performing or furnishing any of the work to communicate with the Engineer through Contractor.

The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the work among Subcontractors or Suppliers or delineating the work to be performed by any specific trade.

All work performed for the Contractor by Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.

The Contractor shall not pay or employ any Subcontractor, Supplier or other person or organization whether initially or as a substitute, against whom Owner or Engineer may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the work against whom Contractor has reasonable objection.

The Owner or Engineer will not undertake to settle any differences between Contractor and his Subcontractors or between Subcontractors.

## USE OF PREMISES

The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of works to the site and land areas identified in and permitted by the Contract Documents on other land areas permitted by Laws and Regulations, right-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. The Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceed in or at law. The Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, Engineer's Consultant and their officials, directors, employees and agents from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

During the progress of the Work, the Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work or at intervals established by the Engineer, the Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. The Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.

### STAGING AREAS

The Contactor shall obtain and deliver to the City written permission for the use of all staging and storage areas outside of the Limits of Construction. Use of the Right-of-Way within the limits of construction must be approved by the City. All applicable erosion control, tree barricade and restoration, including time limits, specifications, etc., must be followed. The Contractor must provide portable restroom that is lockable for the safety of Contractor and the surrounding residents.

### RESTORATION TIME LIMITS

The timely restoration of all impacted areas, especially in the Right-of-Ways, is very important to the Citizens of Clearwater therefore, these time limits are imposed:

* Debris piles shall be removed within five (5) consecutive calendar days.
* Concrete driveways and sidewalks shall be replaced within ten (10) consecutive calendar days of removal. Resident access shall be maintained at all times.
* All arterial and collector roadways shall be restored ASAP.
* Local streets and asphalt driveways shall be restored as soon as a sufficient quantity is generated, however, this is never to exceed fifteen (15) consecutive calendar days. Local and resident access shall be maintained at all times.
* Any irrigation systems or components damaged or impacted by construction activities shall be repaired or replaced “in-kind” within forty-eight (48) hours to minimize the loss of turfgrass or landscape plantings, particularly during periods of drought.
* Sod must be restored “in-kind” within fourteen (14) consecutive calendar days of a successful pipe pressure test, removal of concrete forms, backfill of excavations, replacement of driveways or sidewalks or another project specific milestone. It must be watered for a period of thirty (30) days after it is placed. Erosion control and dust control of denuded areas must be maintained at all times.

If the project or a portion of it does not involve Right-of-Ways, then a different schedule of sod restoration may be considered.

## LICENSE AND PATENT FEES, ROYALTIES AND TAXES

The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner or Engineer in the Contract Documents.

To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless Owner, Engineer, Engineer's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

The Contractor shall pay all sales, consumer, use, and other taxes required to be paid by Contractor in accordance with the Laws and Regulations of the State of Florida and other governmental agencies, which are applicable during the performance of the work.

## LAWS AND REGULATIONS

The Contractor shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Owner’s Representative shall be responsible for monitoring Contractor's compliance with any Laws or Regulations. If Contractor performs any work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses and damages caused by or arising out of such work: however, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations to the Owner to report and resolve discrepancies as described above.

### E-VERIFY

The Contractor and its Subcontractors shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. Contractor will not enter into a contract with any Subcontractor unless each party to the contract registers with and uses the E-Verify system. Subcontractor must provide Contractor with an affidavit stating that Subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall maintain a copy of such affidavit.

The City may terminate this Contract on the good faith belief that Contractor or its Subcontractors knowingly violated Florida Statutes 448.09(1) or 448.095(2)(c). If this Contract is terminated pursuant to Florida Statute 448.095(2)(c), the Contractor may not be awarded a public contract for at least 1 year after the date of which this Contract was terminated. The Contractor is liable for any additional costs incurred by the City as a result of the termination of this Contract.

See Section 448.095, Florida Statutes (2020).

See “VERIFICATION OF EMPLOYMENT ELIGIBILITY FORM” in Appendix.

## PERMITS

Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. The Owner shall assist the Contractor, when necessary, in obtaining such permits and licenses. The Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids. Contractor shall pay all charges of utility owners for connections to the work, and the Owner shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

Unless otherwise stated in the Contract Documents, Clearwater Building Permit Fees will be waived.

## SAFETY AND PROTECTION

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to: (i) all persons on the work site or who may be affected by the work, (ii) all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and (iii) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction. In the event of temporary suspension of the work, or during inclement weather, or whenever Owner’s Representative may direct; Contractor shall, and shall cause Subcontractors, to carefully protect the Work and materials against damage or injury from the weather. If, in the opinion of the Owner’s Representative, any portion of Work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any Subcontractors to so protect the Work, such Work and materials shall be removed and replaced at the expense of Contractor. The Contractor shall initiate and maintain an accident prevention program which shall include but shall not be limited to the establishment and supervision of programs for the education and training of employees in the recognition, avoidance and prevention of unsafe conditions and acts. The Contractor shall provide first aid services and medical care to his employees. The Contractor shall develop and maintain an effective fire protection and prevention program and good housekeeping practices at the site of contract performance throughout all phases of construction, repair, alteration, or demolition. The Contractor shall require appropriate personal protective equipment in all operations where there is exposure to hazardous conditions. The Engineer may order that the work stop if a condition of immediate danger to the Owner’s employees, equipment or if property damage exists. This provision shall not shift responsibility or risk of loss for injuries of damage sustained from the Contractor to Owner, and the Contractor shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property at the site of Contract performance. The Contractor shall instruct his employees required to handle or use toxic materials or other harmful substances regarding their safe handling and use. The Contractor shall take the necessary precautions to protect pedestrians and motorists from harm, and to prevent disruptions of such traffic due to construction activity.

The Contractor shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property and to protect them from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when execution of the work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury or loss to any property caused, directly or indirectly, in whole or part, by Contractor, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor that the Work is acceptable.

## EMERGENCIES

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the Contractor, with or without special instruction or authorization from the Owner or the Owner’s Representative, is obligated to act to prevent damage, injury or loss. The Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Owner’s Representative determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

## DRAWINGS

### SHOP DRAWINGS, SAMPLES, RFIs, AND SUBMITTAL REVIEW

The Contractor shall submit Shop Drawings to Engineer for review and approval as called for in the Technical Specifications or required by the Engineer. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show the Engineer the materials and equipment Contractor proposes to provide and to enable Engineer to review the information. The Contractor shall also submit Samples to Engineer for review and approval. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified: (i) all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto, (ii) all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work, and (iii) all information relative to Contractor's sole responsibilities in respect to means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto. The Contractor shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples with the requirements of the Work and the Contract Documents. Each submittal will have a transmittal cover sheet identifying the shop drawing name, number, and technical specification reference; will bear a stamp or specific written indication that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal. At the time of submission, the Contractor shall give the Engineer specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to Engineer for review and approval of each such variation.

The Contractor shall maintain a submittal log as mentioned in Article 2.5. The Engineer shall receive updated copies at each progress meeting, and the Engineer shall respond to each submittal within fourteen (14) consecutive calendar days. The Contractor shall maintain a request for information (RFI) log as mentioned in Article 2.5. The Engineer shall receive updated copies at each progress meeting, and the Engineer shall respond to each RFI within fourteen (14) consecutive calendar days. The untimely submission of Submittal or RFIs shall not be grounds for a delay claim from the Contractor.

The Engineer's review and approval of Shop Drawings and Samples will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated the Contract Documents. The Engineer's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. The Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. The Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

The Engineer's review and approval of Shop Drawings or Samples shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has in writing called Engineer's attention to each such variation at the time of submission and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by the Engineer relieve the Contractor from responsibility for complying with the requirements of paragraph above discussing field measurements by the Contractor.

The Contractor shall furnish required submittals with complete information and accuracy in order to achieve required approval of an item within two (2) submittals. Owner’s Representative reserves the right to back charge Contractor, for Engineer’s costs for resubmittals that account for a number greater than twenty percent (20%) of the total number of first-time submittals, per the approved initial submittal log. Owner’s Representative reserves the right to back charge Contractor for all third submittals. The number of first-time submittals shall be equal to the number of submittals agreed to by Engineer and Contractor. All costs to Engineer involved with subsequent submittal of Shop Drawings, Samples or other items requiring approval will be back charged to Contractor at the rate of 3.0 times direct technical labor cost by deducting such costs from payments due Contractor for Work completed. In the event that the Contractor requests a substitution for a previously approved item, all of Engineer’s costs in the reviewing and approval of the substitution will be back charged to Contractor, unless the need for such substitution is beyond the control of Contractor.

### AS-BUILT DRAWINGS

The Contractor shall keep and maintain one set of blueprints, As-Built Drawings, in good order and legible condition to be continuously marked-up at the job site. The Contractor shall mark and annotate neatly and clearly all project conditions, locations, configurations and any other changes or deviations which may vary from the details represented on the original Contract Plans, including revisions made necessary by Addenda, Shop Drawings, and Change Orders during the construction process. The Contractor shall record the horizontal and vertical locations, in the plan and profile, of all buried utilities that differ from the locations indicated or which were not indicated on the Contract Plans and buried (or concealed), construction and utility features which are revealed during the construction period. All pipes and utilities abandoned during construction must be clearly identified on the As-Builts including the methods used to abandon.

The As-Built Drawings shall be available for inspection by the Engineer, Engineer’s Consultant, and the Owner’s Representative at all times during the progress of the Project.

The As-Built Drawings shall be reviewed by the Owner’s Representative, or his designee, for accuracy and compliance with the requirements of “As-Built Drawings” prior to submittal of the monthly pay requests. The pay requests shall be rejected if the marked-up redline prints do not conform to the “As-Built Drawings” requirements. As-Built Drawings shall be submitted to the Owner Inspector for approval upon completion of the project and prior to acceptance of final pay request. Final pay request shall not be processed until As-Built Drawings have been reviewed by the Engineer or the Engineer’s Consultant for accuracy and completeness.

Prior to placing new potable water mains in service, the Contractor shall provide the Engineer intersection drawings, as specified for the water mains.

The Owner’s acceptance of the As-Built Drawings does not relieve the Contractor of the sole responsibility for the accuracy and completeness of the As-Built Drawings.

#### General

The Contractor shall prepare an AS-BUILT SURVEY per chapter 5J-17.052, Florida Administrative Code (see definition below), signed and sealed by a Florida Registered Land Surveyor. The Contractor will deliver to the Owner two hard copies of signed and sealed As-Built Drawings and an AutoCAD file.

***5J-17.050 Definition****: (10)(a) As-Built Survey: a survey performed to obtain horizontal and/or vertical dimensional data so that constructed improvements may be located and delineated: also known as Record Survey.*

This survey shall be clearly titled “AS-BUILT SURVEY” and shall be signed and sealed by a Florida registered land surveyor. The survey must be delivered to the City of Clearwater Construction Division upon substantial completion of the project. If this condition is not met, the Owner will procure the services of a Professional Surveyor and Mapper registered in the State of Florida and will back charge the Contractor a fee of $1,800 per day or any portion thereof to provide the Owner with the required As-Built Survey.

#### Sanitary and Storm Sewer Piping Systems

1. Manholes and inlets shall be located by survey coordinates (northing, easting, and elevation) based on the approved horizontal and vertical datum or utilize the stationing supplied on the construction plans. New and replaced service connections shall be dimensioned to the nearest downstream manhole. All manholes, cleanouts and catch basin invert and rim elevations, manhole and catch basin dimensions, pipe sizes, and pipe material shall also be noted on the plan view and also on the profile if one exists. The terminal ends of all subdrains, inverts of all pipes in structures, and the flow line of inlets shall also be noted on the plan view and also on the profile if one exists.
2. Pipe materials and areas of special construction shall be noted.

#### Pressure Pipe construction (Water, Reclaimed Water, Force Main)

All pipes shall be located by survey coordinates (northing, easting, and elevation) based on the approved horizontal and vertical datum or utilize the stationing supplied on the construction plans. Coordinates shall be at all pipe bends, tees, valves, reducers, and deflections. Also, all new and replaced service connections for potable and reclaimed water will be located as described above. Additionally, there must be survey coordinates no further than 100 feet apart on linear type construction and shall denote top of pipe elevation at those points.

#### Electrical and Control Wiring

The As-Built Drawings shall include all changes to the original Contract Plans. The As-Built Drawings shall also include the size, color, and number of wires and conduit. For projects where this information is too voluminous to be contained on the blueline prints, the Contractor shall prepare supplemental drawings, on the same size sheets as the blueline prints, showing the additional conduit runs, 1-line diagrams, ladder diagrams, and other information. The wiring schematic diagrams shall show termination location and wiring identification at each point on the ladder diagram.

#### Horizontal and Vertical Control

The As-Built Survey shall be based on the original datum used for the construction design plans or if required by the Owner the datum shall be referenced to the North American Datum of 1983/90 (horizontal) and the North American Vertical Datum of 1988. The unit of measurement shall be the United States Foot. Any deviation or use of any other datum, (horizontal and/or vertical), must be approved by City of Clearwater, Public Works Department, Geographic Technology Division.

#### Standards

The As-Built Survey shall meet the Minimum Technical Standards per Chapter 5J-17, and the Clearwater CAD STANDARDS set forth below. In addition to locating all improvements that pertain to the As-Built Survey it is the requirement of the Owner to have minimum location points at every change in direction and no more than 100 feet apart on all pressure pipes.

#### Other

The As-Built Drawings shall reflect any differences from the original Contract Plans, in the same level of detail and units of dimensions as the Plans.

### CAD STANDARDS

#### Layer Naming

##### Prefixes and Suffixes

|  |  |
| --- | --- |
| AB-… | prefix denotes As-Built information |
| DI-… | prefix denotes digitized or scanned entities |
| DEMO-… | prefix denotes demolition |
| P-… | prefix denotes proposed entities – line work and symbols |
| F-… | prefix denotes future entities (proposed but not part of this contract) - line work and symbols |
| X-… | prefix denotes existing entities – line work and symbols |
| …-CANOPY | suffix denotes tree canopies |
| …-CL | suffix denotes the centerline of road, ditch, swale etc. |
| …-LN | suffix denotes all linework |
| …-PT | suffix denotes points from survey data or from design stakeout |
| …-TX | suffix denotes text – use for all text, no matter the prefix |

##### Layer Naming Definitions:

|  |  |
| --- | --- |
| BENCH | benchmark, temporary benchmarks |
| BLDG | buildings, sheds, finished floor elevation |
| BOC | curbs |
| BOLLARD | bollards |
| BRUSH | brush lines |
| CABLE | cable TV lines and appurtenances |
| CONCSLAB | concrete slabs |
| DRIVE | driveways |
| EASEMENT | easements |
| EOP | edge of pavement without curbs |
| FENCE | all fences |
| FLOW | flow lines |
| GRADE | grade slopes, grade breaks |
| GROUND | soft ground (unpaved, unimproved) |
| HANDRAIL | handrails |
| HEDGE | hedges |
| LANDSCAPE | landscape areas |
| LOT | platted lot lines information |
| MISC | miscellaneous linework |
| MONU | property corners, monumentation |
| PHONE | telephone lines and appurtenances |
| PROPERTY | property lines information |
| ROAD | roads |
| ROW | Right-of-Way information |
| SEAWALL | seawalls |
| SHORE | shoreline, water elevation |
| SWALE | swales |
| TOB | top of bank |
| TOE | toe of slope |
| TRAFFIC | signal poles, control boxes |
| TREE | trees, bushes, planters |
| UT-ELEC | power lines and appurtenances |
| UT-GAS | gas lines and appurtenances |
| UT-RCW | reclaimed water |
| UT-SAN | sanitary lines and appurtenances |
| UT-STM | storm lines and appurtenances |
| UT-TCOM | telecommunication systems |
| UT-WAT | potable water lines and appurtenances, sprinklers |
| WALK | sidewalk |
| WALL | walls, except seawall |

Other layers may be created as required or needed, using the above format or easy to understand logic.

#### Layer Properties

All AutoCAD objects shall be drawn with their General Properties to be “ByLayer”, pertaining to “Color”, “Linetype”, and “Lineweight”.

#### Text Styles

All text shall use standard AutoCAD fonts.

Text style for X-… (existing) layers shall use the Simplex font, oblique angle of 0°, and a text height of 0.06 times the plot scale.

Text style for P-… (proposed) and F-… (future) layers shall use the Simplex font, oblique angle of 22.5°, and a text height of 0.1 times the plot scale.

### DELIVERABLES

The As-Built Survey shall be produced on bond material, 24" x 36" at a scale of 1"=20’ unless approved otherwise. The consultant shall deliver two hard copies and one digital copy of all drawings. The requested file formats are Autodesk DWG and Adobe PDF files.

Please address any questions regarding format to Mr. Kyle Vaughan, at (727) 444-8232 or e-mail address [Kyle.Vaughan@myClearwater.com](mailto:Kyle.Vaughan@myClearwater.com).

## CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE

The Contractor warrants and guarantees to Owner, Engineer and Engineer's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. Contractor's warranty and guarantee hereunder includes defects or damage caused by abuse, vandalism, modification, or operation by persons other than Contractor, Subcontractors or Suppliers. Until the acceptance of the Work by the Owner, the Work shall be under the charge and care of the Contractor, and he shall take every necessary precaution against injury or damage to any part thereof by action of the elements, or from any other cause whatsoever, arising from the execution or non-execution of the Work. The Contractor shall rebuild, repair, and make good, at his own expense, all injuries or damages to any portion of the Work occasioned by any cause before its completion and final acceptance by the Owner. In addition, “the Contractor shall remedy any defects in the work at his own expense and pay for any damage to other work resulting therefrom which appear within a period of one year from the date of final acceptance”.

Contractor's warranty and guarantee hereunder excludes improper maintenance and operation by Owner's employees and normal wear and tear under normal usage for any portion of the Work, which has been partially accepted by the Owner for operation prior to final acceptance by the Owner. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents: (i) observations by Owner’s Representative, (ii) recommendation of any progress or final payment by Owner’s Representative, (iii) the issuance of a certificate of Substantial Completion or any payment by the Owner to contractor under the Contract Documents, (iv) use or occupancy of the Work or any part thereof by Owner, (v) any acceptance by Owner or any failure to do so, (vi) any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of Acceptance by the Engineer.

## CONTINUING THE WORK

The Contractor shall carry on the work and adhere to the progress schedule during all disputes or disagreements with the Owner. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Owner or Contractor may otherwise agree in writing.

## INDEMNIFICATION

To the fullest extent permitted by law, the Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys’, witnesses’, and expert witnesses’ fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the services provided by Contractor personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor personnel; and (iii) Contractor or Contractor personnel’s failure to comply with or fulfill the obligations established by this Agreement.

The Contractor will update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.

The City assumes no liability for actions of Contractor and will not indemnify or hold Contractor or any third party harmless for claims based on this Agreement or use of Contractor-provided supplies or services.

Notwithstanding anything contained herein to the contrary, this indemnification provision shall not be construed as a waiver of any immunity to which Owner is entitled or the extent of any limitation of liability pursuant to § 768.28, Florida Statutes. Furthermore, this provision is not intended to nor shall be interpreted as limiting or in any way affecting any defense Owner may have under § 768.28, Florida Statutes or as consent to be sued by third parties.

## CHANGES IN COMPANY CONTACT INFORMATION

The Contractor shall notify Owner by US mail addressed to the City Engineer of any changes in company contact information. This includes contact phone, address, project manager, email addresses, etc.

## PUBLIC RECORDS

The Contractor will be required to comply with Section 119.0701, Florida Statutes.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, Rosemarie Call, phone: 727-444-7151 or** [Rosemarie.Call@myclearwater.com](mailto:Rosemarie.Call@myclearwater.com)**, 600 Cleveland Street, Suite 600, Clearwater, FL 33755.**

The Contractor’s duty to comply with public records law applies specifically to:

1. Keep and maintain public records required by the City of Clearwater (hereinafter “public agency”) to perform the service being provided by the Contractor hereunder.
2. Upon request from the public agency’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, as may be amended from time to time, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for the retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency’s custodian of public records in a format that is compatible with the information technology systems of the public agency.
5. A request to inspect or copy public records relating to a public agency’s contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the Contractor of the request, and the Contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
6. The Contractor hereby acknowledges and agrees that if the Contractor does not comply with the public agency’s request for records, the public agency shall enforce the contract provisions in accordance with the contract.
7. A Contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.
8. If a civil action is filed against a Contractor to compel production of public records relating to a public agency’s contract for services, the court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
9. The court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and
10. At least 8 business days before filing the action, the plaintiff provided written notice of the public request, including a statement that the Contractor has not complied with the request, to the public agency and to the Contractor.
11. A notice complies with subparagraph (h)2. if it is sent to the public agency’s custodian of public records and to the Contractor at the Contractor’s address listed on its contract with the public agency or to the Contractor’s registered agent. Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
12. A Contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

# OTHER WORK

## RELATED WORK AT SITE

The City reserves the right to have its own forces enter the construction site at any time and perform work as necessary in order to perform infrastructure repair or maintenance, whether related to the project or not. The Contractor will allow complete access to all utility owners for these purposes.

The City may have its own forces perform new work related to the project, however, this work will be identified in the Contract Scope of Work and coordination will be such that this activity is denoted in the Contractor’s CPM Schedule so as not to cause any delays or interference with the Contractor’s work or schedule.

## COORDINATION

If the Owner contracts with others for the performance of other work on the Project at the site, the following will be set forth in the Scope of Work: (i) the person who will have authority and responsibility for coordination of the activities among the various prime Contractors will be identified; (ii) the specific matters to be covered by such authority and responsibility will be itemized; and (iii) the extent of such authority and responsibilities will be provided. Unless otherwise provided in the Supplementary Conditions, the Owner shall have sole authority and responsibility in respect of such coordination.

# OWNER’S RESPONSIBILITY

Except as otherwise provided in these General Conditions, the Owner shall issue all communications from the Owner to the Contractor through Owner’s Representative.

The Owner shall furnish the data required of the Owner under the Contract Documents promptly and shall make payments to Contractor promptly when they are due as provided in these General Conditions.

The Owner is obligated to execute Change Orders as indicated in the Article on Changes In The Work.

The Owner’s responsibility in respect of certain inspections, tests, and approvals is set forth in the Article on Tests and Inspections.

In connection with the Owner’s right to stop work or suspend work, see the Article on Engineer may Stop the Work. The Article on Suspension of Work and Termination deals with the Owner’s right to terminate services of Contractor under certain circumstances.

The Owner shall not supervise, direct or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the furnishing or performance of the Work. The Owner will not be responsible for the Contractor’s failure to perform or furnish the Work in accordance with the Contract Documents.

# OWNER REPRESENTATIVE’S STATUS DURING CONSTRUCTION

## OWNER’S REPRESENTATIVE

Dependent of the project type, the Owner’s Representative during the construction period will either be the Construction Manager, the Engineer, or a designee of the Project’s Owner. The duties, responsibilities and the limitations of authority of the Owner’s Representative during construction are set forth in the Contract Documents and shall not be extended without written consent of Owner and Engineer.

## CLARIFICATIONS AND INTERPRETATIONS

The Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents regarding design issues only, in the form of Submittal responses, RFI responses, Drawings or otherwise, as Engineer may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. All other clarifications and interpretations of the Contract Documents shall be issued form the Owner’s Representative. Such written clarifications and interpretations will be binding on the Owner and Contractor. If Contractor believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Time and the parties are unable to agree to the amount or extent thereof, if any, Contractor may make a written claim therefore as provided in the Articles for Change of Work and Change of Contract Time.

## REJECTING OF DEFECTIVE WORK

The Owner's Representative or the Engineer will have authority to disapprove or reject Work which Owner's Representative or the Engineer believes to be defective, or that Owner's Representative or the Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. The Owner's Representative or the Engineer will also have authority to require special inspection or testing of the Work whether or not the Work is fabricated, installed or completed.

## SHOP DRAWINGS, CHANGE ORDERS, AND PAYMENTS

In connection with Engineer's authority as to Shop Drawings and Samples, see articles on Shop Drawings and Samples. In connection with Owner's Representative authority as to Change Orders, see the articles on Changes of Work, Contract Price and Contract Time. In connection with Owner's Representative authority as to Applications for Payment, see the articles on Payments to Contractor and Completion.

## DECISIONS ON DISPUTES

The Owner's Representative will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder. Claims, disputes and other matters relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the work and Claims under the Articles for Changes of Work, Changes of Contract Time and Changes of Contract Price will be referred initially to Owner's Representative in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant to Owner's Representative and the other party to the Agreement promptly, but in no event later than thirty (30) days, after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to Owner's Representative and the other party within sixty (60) days after the start of such occurrence or event unless Owner's Representative allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to Owner's Representative and the claimant within thirty (30) days after receipt of the claimant's last submittal unless Owner's Representative allows additional time. Owner's Representative will render a formal decision in writing within thirty (30) days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. Owner Representative’s written decision on such claim, dispute or other matter will be final and binding upon the Owner and Contractor unless (i) an appeal from Owner Representative's decision is taken within thirty (30) days of the Owner Representative’s decision, or the appeal time which may be stated in a Dispute Resolution Agreement between Owner and Contractor for the settlement of disputes or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from Owner Representative’s written decision is delivered by the Owner or Contractor to the other and to Owner's Representative within thirty (30) days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within sixty (60) days of the date of such decision, unless otherwise agreed in writing by the Owner and Contractor.

When functioning as interpreter and judge, the Owner’s Representative will not show partiality to the Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by the Owner’s Representative with respect to any such claim, dispute or other matter will be a condition precedent to any exercise by the Owner or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter pursuant the Article on Dispute Resolution.

## LIMITATIONS ON OWNER REPRESENTATIVE'S RESPONSIBILITIES

Neither Owner Representative's authority or responsibility under this paragraph or under any other provision of the Contract Documents nor any decision made by Owner's Representative in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by Owner's Representative shall create, impose or give rise to any duty owed by Owner's Representative to Contractor, any Subcontractor, any Supplier, any other person or organization or to any surety for or employee or agent of any of them.

The Owner's Representative will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the furnishing or performance of the work. Owner's Representative will not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.

The Owner's Representative will not be responsible for the acts or omissions of the Contractor or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the work.

The Owner Representative’s review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by the Contractor will only be to determine generally that their content complies with the requirements of the Contract Documents and, in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with the Contract Documents.

The limitations upon authority and responsibility set forth in this paragraph shall also apply to Owner Representative’s CEI, the Engineer's Consultants, and assistants.

# CHANGES IN THE WORK

Without invalidating the Agreement and without notice to any surety, the Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such additions, deletions, or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as may otherwise be specifically provided).

If the Owner and Contractor are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Time that should be allowed as a result of a Work Change Directive, a claim may be made therefore as provided in these General Conditions.

The Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in these General Conditions except in the case of an emergency as provided or in the case of uncovering work as provided in article for Uncovering Work.

The Owner and Contractor shall execute appropriate Change Orders or Written Amendments recommended by Owner’s Representative covering:

* changes in the work which are (i) ordered by the Owner (ii) required because of acceptance of defective work under the article for Acceptance of Defective Work or correcting defective Work under the article for Owner May Correct Defective Work or (iii) agreed to by the parties;
* changes in the Contract Price or Contract Time which are agreed to by the parties; and
* changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by Owner’s Representative pursuant to the article for Decisions on Disputes;
* provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, the Contractor shall carry on the Work and adhere to the progress schedule as provided in the article for Continuing the Work.

If notice of any change affecting the general scope of the work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Contractor's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

# CHANGES IN THE CONTRACT PRICE

## CHANGES IN THE CONTRACT PRICE

The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at Contractor's expense without change in the Contract Price. The Contract Price may only be adjusted by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on a written notice of claim stating the general nature of the claim, to be delivered by the party making the claim to the other party and to Owner’s Representative or promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty (60) days after the start of such occurrence or event, unless Owner’s Representative allows additional time for claimant to submit additional or more accurate data in support of the claim, and shall be accompanied by claimant's written statement that the claimed adjustment covers all known amounts to which the claimant is entitled as a result of said occurrence or event. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows: (i) where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (ii) where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit), (iii) where the Work is not covered by unit prices contained in the Contract Documents and agreement is reached to establish unit prices for the Work.

Where the work involved is not covered by unit prices contained in the Contract Documents and where the Owner’s Representative, the Owner, the Engineer, the Engineer's Consultant, and Contractor cannot mutually agree on a lump sum price, the City of Clearwater shall pay for directed changes in the Work, on “COST REIMBURSEMENT” basis. The Contractor shall apply for compensation, detailing Contractors forces, materials, equipment, Subcontractors, and other items of direct costs required for the directed work.

The application for Cost Reimbursement shall be limited to the following items:

1. Labor, including foremen, for those hours associated with the direct work (actual payroll cost, including wages, fringe benefits, labor insurance and labor taxes established by law). Expressly excluded from this item are all costs associated with negotiating the subject change.
2. Materials associated with the change, including sales tax. The costs of materials shall be substantiated through vendors’ invoices.
3. Rental or equivalent rental costs of equipment, including necessary transportation costs if specifically used for the Work. The rental rates shall not exceed the current rental rates prevailing in the locality or as defined in the rental Rate Blue Book for Construction Equipment (a.k.a. DataQuest Blue Book). The rental rate is defined as the full-unadjusted base rental rate for the appropriate item of construction equipment and shall cover the costs of all fuel, supplies, repairs, insurance, and other costs associated with supplying the equipment for work ordered. Contractor-owned equipment will be paid for the duration of time required to complete the work. Utilize the lowest cost combination of hourly, daily, weekly, or monthly rates. Do not exceed the estimated operating costs given in Blue Book. Operating costs will not be allowed for equipment on standby.
4. Additional costs for Bond Insurance if required by the City of Clearwater.

The following fixed fees shall be added to the costs of the directed work performed by the Contractor or Subcontractor.

1. A fixed fee of fifteen percent (15%) shall be added to the costs of Item 1 above. If work is performed by a Subcontractor, the Contractor’s fee shall not exceed five percent (5%), and the Subcontractor’s fee shall not exceed ten percent (10%).
2. A fixed fee of ten percent (10%) shall be added to the costs of Item 2 above.
3. No markup shall be added to the costs of Items 3 and 4.

The fixed fees shall be considered the full compensation for all cost of general supervision, overhead, profit, and other general expenses.

## ALLOWANCES AND FINAL CONTRACT PRICE ADJUSTMENT

It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to Owner and Engineer. Contractor agrees that: (i) the allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and (ii) Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances and no demand for additional payment on account of any of the foregoing will be valid.

Prior to final payment, an appropriate Change Order will be issued as recommended by the Owner’s Representative to reflect actual amounts due Contractor on account of Work covered by allowances and all the Work actually performed by the Contractor, and the Contract Price shall be correspondingly adjusted.

## UNIT PRICE WORK

Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of unit price work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Owner’s Representative. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. The Owner or Contractor may make a claim for an adjustment in the Contract Price if: (i) the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Contract Documents; and (ii) there is no corresponding adjustment with respect to any other item of Work; and (iii) if Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or the Owner believes that the Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease. On unit price contracts, Owner endeavors to provide adequate unit quantities to satisfactorily complete the construction of the project. It is expected that in the normal course of project construction and completion that not all unit quantities will be used in their entirety and that a finalizing change order which adjusts contract unit quantities to those unit quantities actually used in the construction of the project will result in a net decrease from the original Contract Price. Such reasonable deduction of final Contract Price should be anticipated by the Contractor in his original bid.

# CHANGES IN CONTRACT TIME

The Contract Time (or Milestones) may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Time (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to Owner’s Representative promptly, but in no event later than thirty (30) days, after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty (60) days after such occurrence, unless Owner’s Representative allows an additional period of time to ascertain more accurate data in support of the claim, and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time (or Milestones) shall be determined by the Owner’s Representative. No claim for an adjustment in the Contract Time (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph.

All time limits stated in the Contract Documents are of the essence of the Agreement.

Where Contractor is prevented from completing any part of the work within the Contract Time (or Milestones) due to delay beyond the control of Contractor, the Contract Time (or Milestones) may be extended in an amount equal to the time lost due to such delay if a claim is made therefore as provided in the article for Changes in the

Work. Delays beyond the control of Contractor shall include, but not be limited to, acts by the Owner, acts of utility owners or other contractors performing other work as contemplated by the article for Other Work, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both the Owner and Contractor, an extension of the Contract Time (or Milestones) in an amount equal to the time lost due to such delay shall be Contractor's sole and exclusive remedy for such delay. In no event shall the Owner be liable to Contractor, any Subcontractor, any Supplier, any other person, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of Contractor, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts by utility owners or other contractors performing other work as contemplated by paragraph for Other Work.

# TESTS AND INSPECTIONS, CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

## TESTS AND INSPECTION

The Contractor shall give Owner’s Representative and Engineer timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

Contractor shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents. The costs for these inspections, tests or approvals shall be borne by the Contractor except as otherwise provided in the Contract Documents.

If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body including all Owner Building Departments and Owner Utility Departments, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish Owner’s Representative the required certificates of inspection or approval. Unless otherwise stated in the Contract Documents, Owner permit and impact fees will be waived. Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation of the Work.

If any Work (or the work of others) that is to be inspected tested or approved is covered by Contractor without written concurrence of Owner’s Representative, it must, if requested by Owner’s Representative, be uncovered for observation. Uncovering Work as provided in this paragraph shall be at Contractor's expense unless Contractor has given Owner’s Representative and Engineer timely notice of Contractor's intention to cover the same and Owner’s Representative has not acted with reasonable promptness in response to such notice.

## UNCOVERING THE WORK

If any Work is covered contrary to the written request of Owner’s Representative, it must, if requested by Owner’s Representative, be uncovered for Owner Representative’s observation and replaced at Contractor's expense.

If the Owner’s Representative considers it necessary or advisable that covered Work be observed by Owner’s Representative or inspected or tested by others, the Contractor, at Owner Representative’s request, shall uncover, expose or otherwise make available for observation, inspection or testing as Engineer or Owner’s Representative may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the Contractor shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and the Owner shall be entitled to an appropriate decrease in the Contract Price for the costs of the investigation, and, if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in the article for Change in Contract Price. If, however, such Work is not found to be defective, the Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, Contractor may make a claim therefore as provided the article for Change in Contract Price and Change of Contract Time.

## OWNER’S REPRESENTATIVE MAY STOP THE WORK

If the Work is defective, or the Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Engineer or Owner’s Representative may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner’s Representative to stop the Work shall not give rise to any duty on the part of Owner’s Representative or Owner to exercise this right for the benefit of Contractor or any surety or other party. If the Owner’s Representative stops Work under this paragraph, Contractor shall be entitled to no extension of Contract Time or increase in Contract Price.

## CORRECTION OR REMOVAL OF DEFECTIVE WORK

If required by Engineer or Owner’s Representative, Contractor shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Engineer or Owner’s Representative, remove it from the site and replace it with Work that is not defective. The contractor shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

## WARRANTY/CORRECTION PERIOD

If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to the Owner and in accordance with the Owner’s written instructions; (i) correct such defective Work, or, if it has been rejected by the Owner, remove it from the site and replace it with Work that is not defective and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the Owner may have the defective Work corrected or the rejected. Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

In special circumstances where a particular item of equipment is placed in continuous service before Final Completion of all the Work, the correction period for that item may start to run from an earlier date if specifically, and expressly so provided in the Specifications or by Written Amendment.

Where defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

## ACCEPTANCE OF DEFECTIVE WORK

If, instead of requiring correction or removal and replacement of defective Work, the Owner prefers to accept it, the Owner may do so.

The Contractor shall pay all claims, costs, losses, and damages attributable to the Owner’s evaluation of and determination to accept such defective Work such costs to be approved by Owner’s Representative as to reasonableness. If any such acceptance occurs prior to Owner Representative’s recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the Owner may make a claim therefore as provided in article for Change of Contract Price. If acceptance occurs after the Owner Representative’s recommendation for final payment an appropriate amount will be paid by Contractor to the Owner.

## OWNER MAY CORRECT DEFECTIVE WORK

If the Contractor fails within a reasonable time after written notice from Owner’s Representative to correct defective Work or to remove and replace rejected Work as required by Owner’s Representative in accordance with the article for Correction and Removal of Defective Work or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, the Owner may, after seven days' written notice to Contractor, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph the Owner shall proceed expeditiously. In connection with such corrective and remedial action, the Owner may exclude Contractor from all or part of the site, take possession of all or part of the Work, and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the site or for which the Owner has paid Contractor, but which are stored elsewhere. Contractor shall allow Owner, Owner’s Representatives, Agents and Employees, the Owner’s other contractors, and Owner’s Representative, Engineer, and Engineer's Consultants access to the site to enable the Owner to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by the Owner in exercising such rights and remedies will be charged against Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the Owner may make a claim therefore as provided in the article for Change of Contract Price. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time (or Milestones) because of any delay in the performance of the Work attributable to the exercise by the Owner of the Owner’s rights and remedies hereunder.

# PAYMENTS TO CONTRACTOR AND COMPLETION

Requests for payment shall be processed in accordance with F.S. 218.735 and as described herein. Progress payments on account of Unit Price Work will be based on the number of units completed.

## APPLICATION FOR PROGRESS PAYMENT

The Contractor shall submit (not more often than once a month) to Owner’s Representative for review an Application for Payment filled out and signed by Contractor covering the Work completed once each month and accompanied by such supporting documentation as is required by the Owner’s Representative and the Contract Documents. Unless otherwise stated in the Contract Documents, payment will not be made for materials and equipment not incorporated in the Work. Payment will only be made for that portion of the Work, which is fully installed including all materials, labor, and equipment. A retainage of not less than five (5%) of the amount of each Application for Payment for the total of all Work, including As-Built Survey and Inspector overtime reimbursement, completed to date will be held until final completion and acceptance of the Work covered in the Contract Documents. No progress payment shall be construed to be acceptance of any portion of the Work under contract.

The Contractor shall review with the Engineer or the Construction Inspector all quantities and work for which payment is being applied for and reach agreement prior to submittal of an Official Pay Request. The Engineer or the Construction Inspector will verify that the on-site marked up As-Built Drawings are up to date with the work and are in compliance with the Contract Documents.

In addition to all the other payment provisions set out in this contract, the Owner’s Representative may require the Contractor to produce for Owner, within fifteen (15) days of the approval of any progress payment, evidence and/or payment affidavit that all Subcontractors and Suppliers have been paid any sum or sums then due. A failure on the part of the Contractor to provide the report as required herein shall result in further progress or partial payments being withheld until the report is provided.

## CONTRACTOR'S WARRANTY OF TITLE

Contractor warrants and guarantees that title to all work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the Owner no later than the time of payment, free and clear of liens. No materials or supplies for the Work shall be purchased by Contractor or Subcontractor subject to any chattel mortgage or under a conditional sale contact or other agreement by which an interest is retained by the seller. Contractor warrants that he has good title to all materials and supplies used by him in the Work, free from all liens, claims or encumbrances. Contractor shall indemnify and save the Owner harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies incurred in the furtherance of the performance of this Contract. Contractor shall at the Owner’s request, furnish satisfactory evidence that all obligations of nature hereinabove designated have been paid, discharged, or waived. If Contractor fails to do so, then the Owner may, after having served written notice on said Contractor either pay unpaid bills, of which the Owner has written notice, or withhold from the Contractor’s unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to Contractor shall be resumed in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to the Contractor or the Surety. In paying any unpaid bills of the Contractor, the Owner shall be deemed the agent of Contractor and any payment so made by the Owner shall be considered as payment made under the Contract by the Owner to Contractor, and the Owner shall not be liable to Contractor for any such payment made in good faith.

## REVIEW OF APPLICATIONS FOR PROGRESS PAYMENTS

The Owner’s Representative will authorize and process a payment by the Owner within twenty (20) business days after receiving a properly submitted and documented Application for Payment unless the application requires review by an Agent. If the Application for Payment requires review and approval by an Agent, properly submitted and documented Applications for Payment will be paid by the Owner within twenty-five (25) business days. If an Application for Payment is rejected, notice shall be given within twenty (20) business days of receipt indicating the reasons for refusing payment. The reasons for rejecting an application will be submitted in writing, specifying deficiencies, and identifying actions that would make the Application proper. In the latter case, Contractor may make the necessary corrections and resubmit the Application. The Owner’s Representative or Agent may refuse to recommend the whole or any part of any payment to Owner. Owner’s Representative or Agent may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously recommended, to such extent as may be necessary in Owner Representative's or Agent’s opinion to protect the Owner from loss because: (i) the Work is defective, or completed Work has been damaged requiring correction or replacement, (ii) the Contract Price has been reduced by amendment or Change Order, (iii) the Owner has been required to correct defective Work or complete Work, or (iv) Owner’s Representative or Agent has actual knowledge of the occurrence of any of the events enumerated in the article on Suspension of Work and Termination.

The Owner may refuse to make payment of the full amount recommended by the Owner’s Representative or Agent because: (i) claims have been made against the Owner on account of Contractor's performance or furnishing of the Work, (ii) Liens have been filed in connection with the Work, except where Contractor has delivered a specific Bond satisfactory to the Owner to secure the satisfaction and discharge of such Liens, (iii) there are other items entitling the Owner to a set-off against the amount recommended, or (iv) the Owner has actual knowledge of any of the events described in this paragraph. The Owner shall give Contractor notice of refusal to pay in accordance with the time constraints of this section with a copy to the Owner’s Representative or Agent, stating the reasons for such actions, and Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by the Owner and Contractor, when Contractor corrects to the Owner’s satisfaction the reasons for such action.

## PARTIAL UTILIZATION

Use by the Owner at the Owner’s option of any substantially completed part of the Work which (i) has specifically been identified in the Contract Documents, or (ii) Owner, Engineer, Owner’s Representative, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, may be accomplished prior to Final Completion of all the Work subject to the following:

The Owner at any time may request the Contractor in writing to permit the Owner to use any such part of the Work which the Owner believes to be ready for its intended use and substantially complete. If Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner, Owner’s Representative, and Engineer that such part of the Work is substantially complete and request Owner’s Representative to issue a certificate of Substantial Completion for that part of the Work. Contractor at any time may notify Owner, Owner’s Representative, and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Owner’s Representative to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, Owner, Contractor, Owner’s Representative, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner, Owner’s Representative, and Contractor in writing giving the reasons, therefore. If Engineer considers that part of the Work to be substantially complete, the provisions of the articles for Substantial Completion and Partial Utilization will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

## FINAL INSPECTION

Upon written notice from the Contractor that the entire Work or an agreed portion thereof is complete, the Owner’s Representative will make a final inspection with Engineer, Owner and Contractor and will within thirty (30) days notify Contractor in writing of particulars in which this inspection reveals that the Work is incomplete or defective. The Owner’s Representative will produce a final punch list, deliver it to the Contractor within five (5) days of completion and assign a date for this work to be completed not less than thirty (30) days from delivery of the list. Failure to include any corrective work or pending items does not alter the responsibility of the Contractor to complete all the construction services purchased pursuant to the contract. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

## FINAL APPLICATION FOR PAYMENT

After the Contractor has completed all such corrections to the satisfaction of Owner’s Representative and has delivered in accordance with the Contract Documents all maintenance and operating instructions, As-Built, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the paragraph for Bonds and Insurance, certificates of inspection, Inspector overtime reimbursement as required in the Contract Documents and other documents, Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by paragraph for Bonds and Insurance, and (ii) executed consent of the surety to final payment using the form contained in Section V of the Contract Documents.

Prior to application for final payment, the Contractor shall clean and remove from the premises all surplus and discarded materials, rubbish, and temporary structures, and shall restore in an acceptable manner all property, both public and private, which has been damaged during the prosecution of the Work and shall leave the Work in a neat and presentable condition.

## FINAL PAYMENT AND ACCEPTANCE

If through no fault of Contractor, final completion of the Work is significantly delayed and if the Owner’s Representative so confirms, the Owner shall, upon receipt of Contractor's final Application for Payment and recommendation of Owner’s Representative, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by the Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph for Bonds and Insurance, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Owner’s Representative with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that such payment shall not constitute a waiver of claims.

If on the basis of Owner Representative’s observation of the Work during construction and final inspection, and Owner Representative’s review of the final Application for Payment and accompanying documentation, all as required by the Contract Documents, Owner’s Representative is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Owner’s Representative will indicate in writing his recommendation of payment and present the Application to Owner for payment. Thereupon, Owner’s Representative will give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of this article. Otherwise, Owner’s Representative will return the Application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, the Owner shall, within twenty (20) days after receipt thereof pay Contractor the amount recommended by Owner’s Representative.

## WAIVER OF CLAIMS

The making and acceptance of final payment will constitute: a waiver of all claims by the Owner against Contractor, except claims arising from unsettled Liens, from defective Work appearing after final inspection, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and a waiver of all claims by Contractor against the Owner other than those previously made in writing and still unsettled.

# SUSPENSION OF WORK AND TERMINATION

## OWNER MAY SUSPEND THE WORK

At any time and without cause, Owner’s Representative may suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to Contractor, which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if the Contractor makes an approved claim therefore as provided in the articles for Change of Contract Price and Change of Contract Time.

## OWNER MAY TERMINATE

Upon the occurrence of any one or more of the following events:

* Contractor persistently fails to perform the work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule as adjusted from time to time);
* Contractor disregards Laws and Regulations of any public body having jurisdiction;
* Contractor violates Article 6.7.1 of this Section III;
* Contractor disregards the authority of Owner’s Representative;
* Contractor otherwise violates in any substantial way any provisions of the Contract Documents; or if the Work to be done under this Contract is abandoned, or if this Contract or any part thereof is sublet, without the previous written consent of the Owner, or if the Contract or any claim thereunder is assigned by Contractor otherwise than as herein specified, or at any time Owner’s Representative certifies in writing to the Owner that the rate of progress of the Work or any part thereof is unsatisfactory or that the work or any part thereof is unnecessarily or unreasonably delayed;
* Lack of funding. The City’s performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Clearwater City Council.

The Owner may, after giving Contractor (and the surety, if any), seven days' written notice and, to the extent permitted by Laws and Regulations, terminate the services of Contractor, exclude Contractor from the site and take possession of the Work and of all Contractor's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the Owner has paid Contractor but which are stored elsewhere, and finish the Work as the Owner may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages sustained by the Owner arising out of or resulting from completing the Work such excess will be paid to Contractor.

If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to the Owner. Such claims, costs, losses and damages incurred by the Owner will be reviewed by Owner’s Representative as to their reasonableness and when so approved by Owner’s Representative incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph the Owner shall not be required to obtain the lowest price for the Work performed.

Where Contractor's services have been so terminated by the Owner, the termination will not affect any rights or remedies of the Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by the Owner will not release Contractor from liability.

Upon seven (7) days' written notice to Contractor and Owner’s Representative, the Owner may, without cause and without prejudice to any other right or remedy of the Owner, elect to terminate the Agreement. In such case, Contractor shall be paid (without duplication of any items):

* for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
* for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
* for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others;
* and for reasonable expenses directly attributable to termination.

The Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

## CONTRACTOR MAY STOP WORK OR TERMINATE

If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority, or the Owner’s Representative fails to act on any Application for Payment within thirty (30) days after it is submitted or the Owner fails for thirty (30) days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) days' written notice to the Owner and Owner’s Representative, and provided the Owner or Owner’s Representative does not remedy such suspension or failure within that time, terminate the Agreement and recover from the Owner payment on the same terms as provided in the article for the Owner May Terminate. However, if the Work is suspended under an order of court through no fault of Owner, the Contractor shall not be entitled to payment except as the Court may direct. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if Owner’s Representative has failed to act on an Application for Payment within thirty (30) days after it is submitted, or the Owner has failed for thirty (30) days to pay Contractor any sum finally determined to be due, Contractor may upon seven (7) days’ written notice to the Owner and Owner’s Representative stop the Work until payment of all such amounts due Contractor. The provisions of this article are not intended to preclude Contractor from making claim under paragraphs for Change of Contract Price or Change of Contract Time or otherwise for expenses or damage directly attributable to Contractor's stopping Work as permitted by this article.

# DISPUTE RESOLUTION

If and to the extent that the Owner and Contractor have agreed on the method and procedure for resolving disputes between them that may arise under this Agreement, such dispute resolution method and procedure will proceed. If no such agreement on the method and procedure for resolving such disputes has been reached, subject to the provisions of the article for Decisions on Disputes, the Owner and Contractor may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute provided, however, that nothing herein shall require a dispute to be submitted to binding arbitration.

# MISCELLANEOUS

## SUBMITTAL AND DOCUMENT FORMS

The form of all submittals, notices, change orders, pay applications, logs, schedules and other documents permitted or required to be used or transmitted under the Contract Documents shall be determined by the Owner’s Representative subject to the approval of Owner.

## GIVING NOTICE

Whenever any provision of the Contract Documents requires the giving of written notice, notice will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

## NOTICE OF CLAIM

Should the Owner or Contractor suffer injury or damage to person or property because of any error, omission or any act of the other party or of any of the other party's officers, employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

## PROFESSIONAL FEES AND COURT COSTS INCLUDED

Whenever reference is made to "claims, costs, losses and damages," the phrase shall include in each case, but not be limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or other dispute resolution costs.

## ASSIGNMENT OF CONTRACT

The Contractor shall not assign this contract or any part thereof or any rights thereunder without the approval of Owner, nor without the consent of surety unless the surety has waived its rights to notice of assignment.

## RENEWAL OPTION

Annual Contracts issued through the Public Works Department may be renewed for up to three (3) years, upon mutual consent of both the Owner and the Contractor/Vendor. All terms, conditions and unit prices shall remain constant unless otherwise specified in the contract specifications or in the Invitation to bid. Renewals shall be made at the sole discretion of the Owner and must be agreed to in writing by both parties. All renewals are contingent upon the availability of funds, and the satisfactory performance of the Contractor as determined by the Construction Department.

## ROLL-OFF CONTAINERS AND/OR DUMPSTERS

All City construction projects shall utilize City of Clearwater Solid Waste roll-off containers and/or dumpsters for their disposal and hauling needs. For availability or pricing contact City of Clearwater, Solid Waste and Recycling Department, by phone: (727) 562-4920.

# ORDER AND LOCATION OF THE WORK

The City reserves the right to accept and use any portion of the work whenever it is considered to the public interest to do so. The Engineer shall have the power to direct on what line or street the Contractor shall work and order thereof.

# MATERIAL USED

All material incorporated into the final work shall be new material unless otherwise approved by the Engineer. If requested by the Engineer, the Contractor shall furnish purchase receipts for all materials.

# CONFLICT BETWEEN PLANS AND SPECIFICATIONS

The various Contract Documents shall be given precedence, in case of conflict, error or discrepancy, as follows: Modifications, Contract Agreement, Addenda, Supplementary General Conditions, General Conditions, Supplementary Technical Specifications and Technical Specifications. In a series of Modifications or Addenda the latest will govern. In the case of an inconsistency between Drawings and Specifications or within either Document not clarified by addendum, the better quality, more stringent or greater quantity of Work shall be provided in accordance with the Engineer/Architect’s interpretation.

# OWNER DIRECT PURCHASE (ODP)

## SALES TAX SAVINGS

The Owner reserves the right to purchase certain portions of the materials or equipment for the Project directly in order to save applicable sales tax in compliance with Florida Law since owner is exempt from the payment of sales tax. The contract price includes Florida sales and other applicable taxes for materials, supplies, and equipment which will be a part of the Contractor's Work. Owner-purchasing of construction materials or equipment, if selected, will be administered on a deductive Change Order basis. The contract price shall be reduced by the actual cost of the materials or equipment purchased by owner plus the normally applicable sales tax, even if the actual cost is in excess of the cost for the materials or equipment as-bid by the Contractor. For purposes of calculating Engineering Fees, Contractor Fees, Architects’ Fees, and any other amounts that are based on the contract amount, however, the original, as-bid contract amount shall be used.

Direct purchase shall be considered for single items or materials that exceed $10,000 in value and/or items identified in Section V, Bidders Proposal. The Contractor shall provide the Owner an ODP Summary of all intended suppliers, vendors, equipment, and materials for consideration as ODP materials or equipment (refer to ODP Instructions in Contract Appendix).

## TITLE AND OWNER RISK

The Owner will issue Purchase Orders and provide a copy of Owner’s Florida Consumer Certification of Tax Exemption and Certificate of Entitlement directly to the Vendor for ODP materials or equipment. Invoices for ODP materials or equipment shall be issued to the Owner, and a copy sent to the Contractor.

Notwithstanding the transfer of ODP materials or equipment by the Owner to the Contractor's possession, the Owner shall retain legal and equitable title to any and all ODP materials or equipment; therefore, the owner assumes the risk of damage or loss at the time of purchase or delivery of items, unless material is damaged as the result of negligence by the Contractor.

## CONTRACTOR’S RECEIPT OF MATERIALS

The Contractor shall be fully responsible for all matters relating to the receipt of materials or equipment furnished to the Owner including, but not limited to, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, and inspection and acceptance of the goods at the time of delivery. The Owner shall coordinate with Contractor and Vendor delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Contractor for the particular materials or equipment furnished. The Contractor shall provide all services required for the unloading and handling of materials or equipment. The Contractor agrees to indemnify and hold harmless the Owner from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the action of the Contractor.

As ODP materials or equipment are delivered to the job site, the Contractor shall visually inspect all shipments from the suppliers and approve the vendor's invoice for items delivered. The Contractor shall assure that each delivery of ODP materials or equipment is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and/or an invoice from the supplier conforming to the Purchase Order together with such additional information as the Owner may require. The Contractor will then forward an electronic copy of the invoice and supporting documentation to the Owner for payment within fourteen (14) calendar days of receipt of said goods or materials. Such payment shall be directly from public funds, from Owner to Vendor.

The Contractor shall insure that ODP materials or equipment conform to the Specifications and determine prior to acceptance of goods at time of delivery if such materials or equipment are patently defective, and whether such materials or equipment are identical to the materials or equipment ordered and match the description on the bill of lading. If the Contractor discovers defective or non-conformities in ODP materials or equipment upon such visual inspection, the Contractor shall not utilize such nonconforming or defective materials or equipment in the Contractor's Work and instead shall properly notify the Owner of the defective or nonconforming condition so that repair or replacement of those materials or equipment can occur without undue delay or interruption to the Project. If the Contractor fails to perform such inspection and otherwise incorporates into the Contractor's Work such defective or nonconforming ODP materials or equipment, the condition of which it either knew or should have known by performance of an inspection, Contractor shall be responsible for all damages to the Owner, resulting from Contractor's incorporation of such materials or equipment into the Project, including liquidated damages.

## ODP RECORDS, WARRANTIES, AND INDEMNIFICATION

The Contractor shall maintain records of all ODP materials or equipment it incorporates into Contractor's Work from the stock of ODP materials or equipment in its possession. The Contractor shall account monthly to the Owner for any ODP materials or equipment delivered into the Contractor's possession, indicating portions of all such materials or equipment which have been incorporated in the Contractor's Work.

The Contractor shall be responsible for obtaining and managing all warranties and guarantees for all materials, equipment and products as required by the Contract Documents. All repair, maintenance, or damage-repair calls shall be forwarded to the Contractor for resolution with the appropriate supplier, vendor, or Subcontractor.

The Owner shall indemnify and hold Contractor harmless from any sales tax (and interest and penalties incurred in connection therewith) in the event there is a final determination that purchases made by Owner, which Owner treats as being exempt from sales tax, are subject to sales tax. "Final determination" shall mean an assessment by the Department of Revenue that is no longer subject to protest, or a determination of a court having jurisdiction over such matters that is final and not subject to appeal. The Contractor agrees to promptly notify owner of any audit, assessment, proposed assessment or notice of deficiency issued with regard to the Project and relating to ODP materials or equipment. ODP Purchase Orders must be closed out prior to closing out the contract/Contractor Purchase Order. If material costs needed for the project exceed the ODP Purchase Order amount, the ODP Purchase Order will not be increased. Amounts in excess of the ODP Purchase Order will be paid for by the Contractor.

# RESIDENT NOTIFICATION OF START OF CONSTRUCTION

## GENERAL

The Contractor shall notify all residents along the construction route or within a 500-foot radius, unless stated otherwise in the Contract Documents, with a printed door hanger notice indicating the following information about the proposed construction work and the Contractor performing the work: City seal or logo; the scheduled date for the start of construction; the type of construction; general sequence and scheduling of construction events; possibility of water service disruption and/or colored water due to construction efforts; Contractor’s name, the Superintendent’s name, Contractor address and telephone number; Contractor’s company logo (optional); requirement for residents to remove landscaping and/or other private appurtenances which are in conflict with the proposed construction; and other language as appropriate to the scope of Contract work. Sample door hanger including the proposed language shall be approved by the City prior to the start of construction. Notification shall be printed on brightly colored and durable card stock and shall be a minimum of 4-¼ by 11 inches in size. Notification (door hanger) shall be posted to residences and businesses directly affected by the Contractor’s activities no later than seven (7) days prior to the start of construction activity. Directly affected by the Contractor’s activities shall mean all Contractor operations including staging areas, equipment and material storage, principal access routes across private property, etc. The Contractor cannot start without proper seven (7) day notice period to residents. Contractor is required to maintain sufficient staff to answer citizen inquiries during normal business hours and to maintain appropriate message recording equipment to receive citizen inquires after business hours.

Resident notification by the Contractor is a non-specific pay item to be included in the bid items provided in the contract proposal.

## EXAMPLE

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**NOTICE OF CONSTRUCTION**

TODAY’S DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

**PLEASE EXCUSE US FOR ANY INCONVENIENCE**

We are the construction contractor performing the *(state project name)* for the City of Clearwater in your area. The work will be performed in the public right-of-way adjacent to your property. This notice is placed a minimum of seven (7) days in advance of construction to notify property owners of the pending start of construction.

*(Brief description of the construction process to be expected by the property owners)*

The construction process may necessitate the removal of certain items from the right-of-way. Typical items such as sprinklers, grass, and postal approved mailboxes will be replaced by the contractor within a reasonably short period of time. The replacement of driveways and sidewalks will be made using standard asphalt or concrete materials. The property owner is responsible for the expense and coordination to replace driveways and sidewalks which have customized colors, textures and/or materials. Small trees, shrubs, landscaping materials, unauthorized mailboxes or structures within the right-of-way which must be removed due to the construction process, will not be replaced. The property owner is responsible for relocating any such items which the property owner wishes to save prior to the start of construction. Vehicles parked on the streets or within the right-of-way may be required to be placed elsewhere.

We are available to answer any questions you may have regarding the construction process or any particular item that must be relocated. Please contact our Construction Manager \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at (727) \_\_\_\_\_\_\_\_\_\_\_. We will be more than happy to assist you.

Construction is anticipated to begin on: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**Company Name**

**Company Address**

**Contractor Phone Number**

# PROJECT INFORMATION SIGNS

## SCOPE AND PURPOSE

The Owner desires to inform the general public on the Owner's use and expenditure of public funding for general capital improvement and maintenance projects. To help accomplish this purpose, the Contractor is required to prepare and display public project information signs during the full course of the contract period. These signs will be displayed at all locations of active work. Payment to the Contractor for the preparation, installation and management of project signs shall be included in the cost of the work. The number of and type of signs will be stated in SECTION IV, SCOPE OF WORK.

## PROJECT SIGN, FIXED OR PORTABLE

Sign type shall be "fixed" on stationary projects and "portable" on projects which have extended locations or various locations. The particular wording to be used on the signs will be determined after the contract award has been approved. The Contractor will be provided the wording to be used on sign at the preconstruction conference.

## FIXED SIGN

Fixed signs shall be 4-foot by 6-foot (4’x6’) in size. Sign material shall be Aluminum DIBOND or exterior grade plywood with a minimum thickness of 1/2-inch painted white on both sides with exterior rated paint. Sign shall be attached to a minimum of two (2) 4-inch by 4-inch (3½”x3½”) below grade pressure treated (P.T.) wooden posts and braced as necessary for high winds. Posts shall be long enough to provide secure anchoring in the ground. Bottom of sign must be a minimum of 24-inches above the ground. An alternative mounting system or attachment to fencing or other fixed structure can be considered for approval.

## PORTABLE SIGNS

Portable sign shall be a minimum of 24-inches by 30-inches (24”x30”) in size and will be attached to a standard sized portable traffic barricade. Sign material shall be aluminum, 0.080-inches or thicker, background of white reflective sheeting, and shall be silkscreen or vinyl lettering. Portable sign shall be two signs located and attached to each side of the traffic barricade.

## SIGN COLORING

The background shall be white. Project Descriptive Name shall be in blue lettering. All other letterings shall be black. Basic lettering on sign shall be in all capital letters, of size proportional to the sign itself. Each sign shall depict the City’s logo. The Project Manager/City Representative shall provide the appropriate electronic logo file(s) to the Contractor.

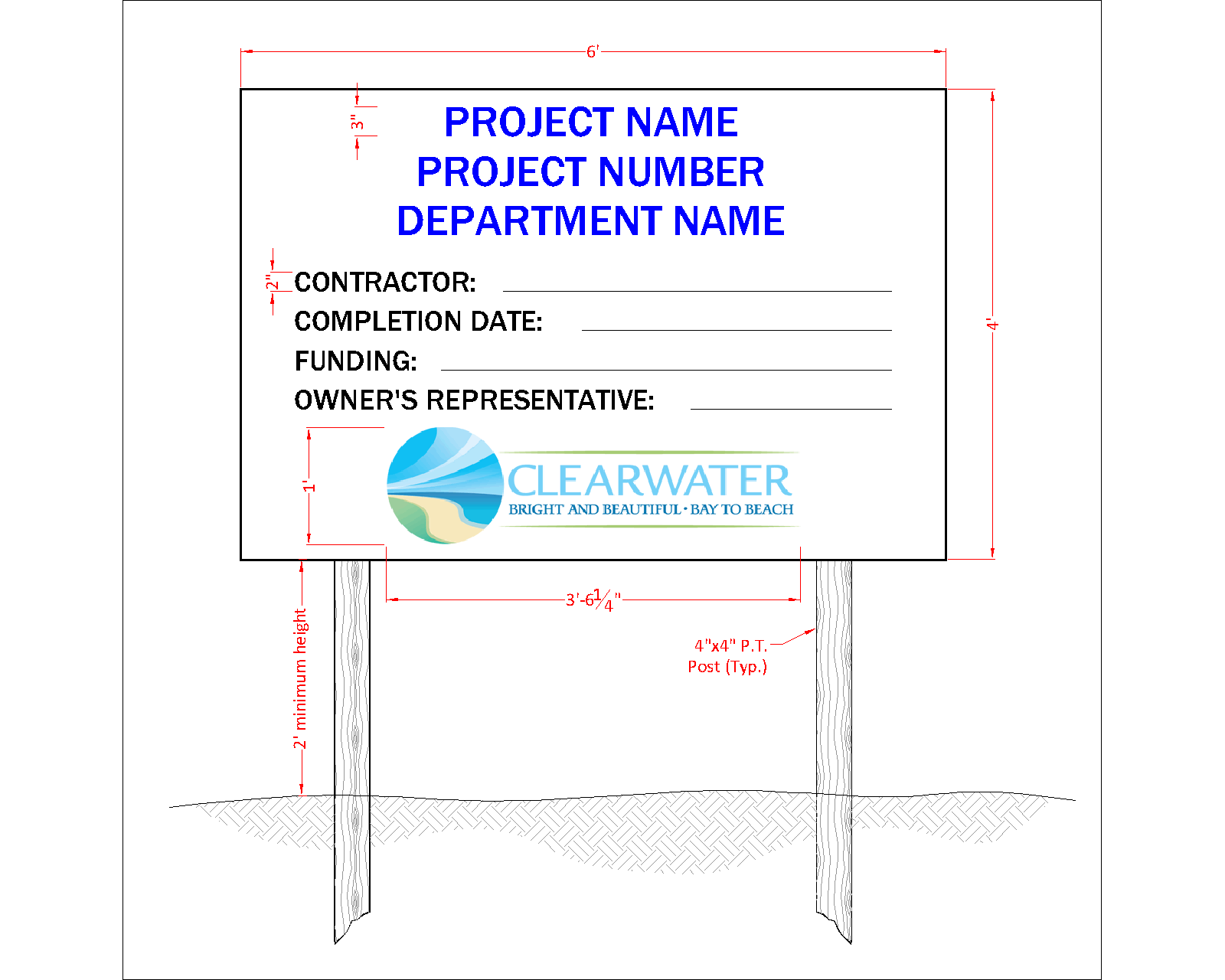
## SIGN PLACEMENT

Signs shall be placed where they are readily visible by the general public which pass by the project site. Signs are not to be placed where they may become a hazard or impediment to either pedestrian or vehicular traffic. For construction projects outside of the Owner’s right-of-way, the signs will be placed on the project site. For projects constructed inside of the Owner's right-of-way, the signs will be placed in the right-of-way. Portable signs are to be moved to the locations of active work on the project. Multiple portable signs will be necessary where work is ongoing in several locations at the same time. Fixed signs are to be placed at the start of construction and will remain in place until the request for final payment.

## SIGN MAINTENANCE

The Contractor is responsible for preparation, installation, movement, maintenance, replacement, removal, and disposal of all project signs during the full course of the contract period. The Contractor will place and secure portable signs from dislocation by wind or other actions. Signs are to be cleaned as necessary to maintain legibility and immediately replaced if defaced.

## TYPICAL PROJECT SIGN

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Project Sign Details:

Font Type: Franklin Gothic Medium, (ALL CAPS)  
Font Colors: Blue - Pantone 3015 and Black.

# AWARD OF CONTRACT, WORK SCHEDULE AND GUARANTEE

It will be required that the work will commence not later than five (5) calendar days after the Engineer gives written Notice to Proceed (NTP), which notice shall be given as outlined in Article 2 of these General Conditions.

It is further required that all work within this contract be completed within the indicated number of consecutive calendar days as determined in Section IV, Scope of Work. Contract Time to commence at start date noted on the Notice to Proceed. If the Contractor fails to complete the work within the stipulated time, the City will retain the amount stated in the Contract, per calendar day, for each day that the contract remains incomplete. The work shall be discontinued on Saturdays, Sundays and approved Holidays. If it becomes necessary for the Contractor to perform work on Saturdays, Sundays, and approved City of Clearwater Employee Holidays, that in the opinion of the Engineer, will require the presence of Inspectors, the Contractor shall pay the City of Clearwater, Florida, the amount of Four Hundred Eighty Dollars ($480.00) per each eight-hour (8) day for each Inspector given such assignment.

The Contractor shall remedy any defects in the work at his own expense and pay for any damage to other work resulting therefrom which appear within a period of one (1) year from the date of final acceptance.

# SCRUTINIZED COMPANIES AND BUSINESS OPERATIONS WITH CUBA AND SYRIA CERTIFICATION FORM AND ISRAEL CERTIFICATION FORM

Pursuant to Section 287.135, Florida Statutes, any vendor, company, individual, principal, subsidiary, affiliate, or owner on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations in Cuba or Syria, is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with the City of Clearwater for goods or services for an amount equal to or greater than one million ($1,000,000.00) dollars. Any vendor, company, individual, principal, subsidiary, affiliate, or owner on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with the City of Clearwater for goods or services for ANY amount.

Each entity submitting a bid, proposal, or response to a solicitation must certify to the City of Clearwater that it is not on the aforementioned lists, or engaged in business operations in Cuba or Syria, or engaged in a boycott of Israel at the time of submitting a bid, proposal or response, in accordance with Section 287.135, Florida Statutes. Business Operations means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce. Boycott Israel or boycott of Israel means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered as evidence that a company is participating in a boycott of Israel.

The certification forms (the Certification) are attached hereto, and must be submitted, along with all other relevant contract documents, at the time of submitting a bid, proposal, or response. Failure to provide the Certification may deem the entity’s submittal non-responsive. If the City of Clearwater determines that an entity has submitted a false certification form, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List, or engaged in business operations in Cuba or Syria, or engaged in a boycott of Israel, then the contract may be terminated at the option of the City of Clearwater. Other than the submission of a false certification, the City of Clearwater, on a case-by-case basis and in its sole discretion, may allow a company to bid on, submit a proposal for, or enter into or renew a contract for goods or services, if the conditions set forth in Section 287.135, Florida Statutes, apply.

The City retains the right to pursue civil penalties and any other applicable rights and remedies as provided by law for the false submission of the attached certification forms.

See Section V of the Contract for Certification Forms to be executed and submitted with the Bid/Proposal Form.