

Exhibit B
To the Interlocal Agreement

District Contractor Agreement

Exhibit A

General Conditions of the District Contractor Agreement

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 **THE CONTRACT DOCUMENTS.** The Contract Documents consist of the District Contractor Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, the Specifications for Construction, Contractor's Proposal, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Engineer pursuant to Sub-paragraph 2.2.8, or (4) a written order for a minor change in the Work issued by the Engineer pursuant to Paragraph 12.4. The Contract Documents do not include Bidding Documents such as the Advertisement to Bid, the Instructions to Bidders, or portions of Addenda relating to any of these, or any other documents, unless specifically enumerated in the District Contractor Agreement.

1.1.2 **THE CONTRACT.** The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Engineer and the Contractor, but the Engineer shall be entitled to performance of obligations intended for its benefit, and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the District or the Engineer and a Subcontractor or Sub-subcontractor.

1.1.3 **THE WORK.** The Work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.4 **THE PROJECT.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or part.

1.1.5 **THE PERMIT.** The Permit is that permit or permits, issued by the governmental entity or entities having jurisdiction over the site or the Work, which authorizes the commencement of construction of the Work in accordance with the Drawings and Specifications.

1.1.6 **PROVIDED.** The term "provided" as used in the Contract shall mean the furnishing of labor, supervision, tools, materials, supplies, equipment, shop drawings, catalogs, brochures, together with any other services and/or accessory items necessary to perform the Work and produce an item, system or component of the Project.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed in not less than triplicate by the District and Contractor. If either the District or the Contractor or both do not sign the Conditions of the Contract,

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Drawings, Specifications, or any of the other Contract Documents, the Engineer shall identify such documents.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, reviewed conditions of all relevant approvals and permits, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents. Execution of the Contract will be construed as evidence that such an examination has been made. Later claims for labor, equipment or materials required for difficulties encountered, which could have been foreseen had such examination been made, will not be allowed.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

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

1.2.5 In the event of a conflict between the various Contract Documents, Contract Documents shall be given relative precedence as follows:

- .1 The Agreement shall take precedence over all other Contract Documents.
- .2 Drawings and Specifications shall take precedence over all other Contract Documents except for the Agreement.
- .3 The General Conditions and Supplementary Conditions thereto shall take precedence over all other Contract Documents except for the Agreement and the Drawings and Specifications.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All Drawings, Specifications, and copies thereof furnished by the Contractor or the Engineer are and shall remain the property of the District. Further, the Engineer shall, upon final completion, provide the District with a set of reproducible “as-built” Drawings and Specifications accurately reflecting changes occurring during construction prepared to a detail reasonably required by the District.

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ARTICLE 2

ENGINEER

2.1 DEFINITION

2.1.1 The Engineer is the lawfully licensed professional Engineer, or an entity lawfully practicing Engineerure, identified as such in the District Contractor Agreement, and is referred to throughout the Contract Documents as if singular in number and feminine in gender. The term Engineer means the Engineer or her authorized representative.

2.2 ADMINISTRATION OF THE CONTRACT

2.2.1 The Engineer will provide administration of the Contract as hereinafter described.

2.2.2 The Engineer is an authorized representative of the District during construction and until payment is due. The Engineer will advise and consult with the District. The District's instructions to the Contractor shall be forwarded through the Engineer. Nevertheless, the Engineer will have authority to act on behalf of the District only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with subparagraph 2.2.18.

2.2.3 The Engineer will visit the site at intervals appropriate to the stage of construction to familiarize herself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of Work. On the basis of her on-site observations as an Engineer, she will keep the District informed of the progress of the Work, and will exercise all reasonable care in discharging her professional responsibilities under the Contract Documents to guard the District against defects and deficiencies in the Work of the Contractor.

2.2.4 The Engineer will not be responsible for and will not have control or be in charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and she will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Engineer will not be responsible for, have control, or charge over the acts or omissions of the Contractor, Subcontractors, any of their agents or employees, or any other persons performing any of the Work.

2.2.5 The Engineer shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Engineer may perform her functions under the Contractor Documents.

2.2.6 Based on the Engineer's observations and an evaluation of the Contractor's Application for Payment, the Engineer will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Paragraph 9.4.

2.2.7 The Engineer shall be, in the first instance, the interpreter of the requirements of the Contract Documents, however, except to the extent provided for elsewhere in this Agreement, the

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Engineer will not be the final judge of the performance thereunder by either the District and the Contractor. In the event of a dispute between the District and the Contractor relating to the interpretation of the Contract Documents, the Engineer shall review the respective claims of the District and the Contractor, and it shall first advise the District of its interpretation of such claim or claims. After discussion with the District, the Engineer shall have the right to notify the Contractor of such interpretation. These provisions shall not preclude the District's and Contractor's right to agree on an interpretation different from that of the Engineer.

2.2.8 The Engineer will render interpretations of the Contract Documents necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon. Either party to the Contract may make written request to the Engineer for such interpretations.

2.2.9 Claims, disputes and other matters in question between the Contractor and the District relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred initially to the Engineer for decision which she will render in writing within a reasonable time.

2.2.10 All interpretations and decisions of the Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. In her capacity as interpreter and initial judge, she will endeavor to secure faithful performance by both the District and the Contractor, will not show partiality to either, and will not be liable for the result of any interpretation or decision rendered in good faith in such capacity.

2.2.11 The District's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents.

2.2.12 Any claim, dispute or other matter in questions between the Contractor and the District referred to the Engineer, except those relating to artistic effect as provided in Subparagraph 2.2.11 and except those which have been waived by the making or acceptance of final payment as provided in Subparagraphs 9.9.4 and 9.9.5, shall be subject to redress in the appropriate court of law. However, neither party shall file the initial pleading seeking such redress of any such claim, dispute or other matter until the earlier of (1) the day on which the Engineer has rendered a written decision, or (2) the tenth day after the parties have presented their evidence to the Engineer or have been given a reasonable opportunity to do so, if the Engineer has not rendered her written decision by the date. When such a written decision of the Engineer states (1) that the decision is final but subject to appeal, and (2) that filing of the initial pleading seeking such redress of claim, dispute or other matter covered by such decision must be filed with the appropriate court within thirty (30) days after the date on which the party making the demand receives the written decision, failure to file such pleading within said thirty (30) day period will result in the Engineer's decision becoming final and binding upon the District and the Contractor.

2.2.13 The Engineer will have authority to reject all Work which does not conform to the Contract Documents. Whenever, in her opinion, she considers it necessary or advisable for the implementation of the intent of the Contract Documents, she will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.2 whether or not such Work be then fabricated, installed or completed. However, neither the Engineer's authority to act under this Subparagraph 2.2.13, nor any decision made by her in good faith either to exercise or not to exercise such authority, shall give raise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

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Provided, prior written approval shall be obtained from the District for all acts by Engineer under this Subparagraph.

2.2.14 The Engineer will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.2.15 The Engineer will prepare Change Orders in accordance with Article 12, and will have authority to order minor changes in the Work as provided in Subparagraph 12.4.1.

2.2.16 The Engineer will conduct inspections to determine the dates of Substantial Completion and final completion, will receive and forward to the District for the District's review written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 9.9.

2.2.17 If the District and Engineer agree, the Engineer will provide one or more Project Representatives to assist the Engineer in carrying out her responsibilities at the site. The duties, responsibilities and limitations of authority of any such project representative shall be as set forth in an exhibit to be incorporated into the Contract Documents.

2.2.18 The duties, responsibilities and limitations of authority of the Engineer as the District's representative during construction as set forth in the Contract Documents will not be modified or extended without written consent of the District, the Contractor and the Engineer.

2.2.19 In case of the termination of the employment of the Engineer, the District shall appoint an Engineer whose status under the Contract Documents shall be that of the former Engineer.

ARTICLE 3

DISTRICT

3.1 DEFINITION

3.1.1 The District is the entity identified as such in the District Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term District means the District or its authorized representative.

3.2 INFORMATION AND SERVICES REQUIRED OF THE DISTRICT

3.2.1 The District shall furnish a survey or plans describing the utility locations for the site of the Project and a legal description of the site. The District shall establish reference points and provide a one time staking as is reasonably necessary to construct the Project. The Contractor will protect and preserve such staking at its expense and will make no changes or relocations without the prior written approval of the District. The Contractor will report to the District whenever any staked reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. The Contractor will,

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at its expense, replace and accurately relocate all staked points so lost, destroyed or moved, including those lost, destroyed or moved by vandalism or other actions by third parties.

3.2.2 Except as provided in Subparagraph 4.7.1, the District shall not secure or pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.2.3 Information or services under the District's control shall be furnished by the District with reasonable promptness to avoid delay in the orderly progress of the Work. Where such information or service is required from the District, and such information of service affects the progress of the Work, the Contractor shall coordinate the furnishing thereof with the District and shall include such items in the Contractor's progress schedule.

3.2.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

3.2.5 The foregoing are in addition to other duties and responsibilities of the District enumerated herein and especially those in respect to Work by District or by separate contractors, payments and completion, and insurance in Articles 6, 9 and 11 respectively.

3.3 DISTRICT'S RIGHT TO STOP THE WORK

3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2 or persistently fails to carry out the Work in accordance with the Contract Documents, the District, by a written order signed personally or by an agent specifically so empowered by the District in writing, 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 the District to stop the Work shall not give rise to any duty on the part of the District to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

3.4 DISTRICT'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven days after receipt of written notice from the District to commence and continue correction of such default or neglect with diligence and promptness, the District may, after seven days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due to the Contractor the cost of correcting such deficiencies, including compensation for the Engineer's additional services made necessary by such default, neglect, or failure. If the payments then or thereafter due to the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the District.

ARTICLE 4

CONTRACTOR

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4.1 DEFINITION

4.1.1 The Contractor is the person or entity identified as such in the District Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Engineer any error, inconsistency or omission he may discover. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work. The Contractor shall at once report to the District anything contained within the Contract Documents that is contrary to local codes, laws, statutes, regulations, and zoning requirements.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract.

4.3.2 The Contractor shall be responsible to the District for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor.

4.3.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Engineer in his administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 7.7 by persons other than the Contractor.

4.4 LABOR AND MATERIAL

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

4.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

4.4.3 Unless otherwise expressly provided in the Contract, reference to any equipment, material, article or process, by trade name, make or catalog number, shall mean that Contractor shall furnish such materials and items exactly as provided for. The Contractor shall itemize any proposed substitutions together with any proposed change in the Contract Sum which would result from the acceptance by the District of the proposed substitution. The Contractor shall furnish to the District for its prior written approval the name of the manufacturer, the model number and other identifying data and information in

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respect to the performance, capacity, nature and rating of the substitution or other equipment which the Contractor contemplates incorporating in the Work. When so directed by District, samples shall be submitted for approval at the Contractor's expense, with all shipping and charges prepaid. Substitutions installed or used without required prior written approval may be rejected, at the sole option of the District.

4.5 WARRANTY

4.5.1 The Contractor warrants to the District and the Engineer that all materials and equipment furnished under the Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the District or Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 13.2. Further, this warranty shall not be restricted by the limitations of any equipment warranty issued by manufacturer. Provided still further, refusal of a subcontractor or equipment manufacturer responsible for the defective work to correct such Work shall not excuse the Contractor from performing under this warranty.

4.5.2 All warranties and guarantees shall extend for one (1) full year from the date stated in the Certificate of Substantial Completion unless warranties or guarantees having a longer period of time are stated in the Drawings, Specifications, elsewhere in the Contract Documents or are otherwise provided by manufacturers or other persons supplying materials, equipment, appliances or labor for the Work. Provided further, in addition to all warranties set forth elsewhere in the Contract Documents, the Contractor shall also be deemed to have granted the District an implied warranty of fitness and merchantability for the purposes or uses intended for all Work performed for the period indicated above. All warranties shall be freely assignable by the District to subsequent owners or users of the Project.

4.5.3 The Contractor agrees to execute an assignment of all warranties and guarantees to the District on all materials and equipment whether or not installed after Substantial Completion of the Work.

4.5.4 Any breakdowns, defects, malfunctions or other occurrence which the Contractor has warranted or guaranteed against, shall be corrected as soon as is reasonably possible with corrective work commencing within five (5) days of demand by the District. Provided, if the Contractor cannot commence such work within five (5) days due to a circumstance not caused by his actions or omissions to act and where such circumstance is beyond his control, such corrective Work shall commence at the time such circumstance ceases to exist. Provided further, if the District in its reasonable discretion classifies such breakdown, defect, malfunction or other occurrence as one creating an emergency condition, corrective Work shall commence within twenty-four (24) hours of demand by the District and shall continue on a twenty-four (24) hour per day, seven (7) day per week basis, and the Contractor shall utilize all necessary labor, materials and equipment to complete such Work as soon as possible. Provided for the purposes of this Paragraph 4.5, "Warranty", an emergency condition shall be a condition which has any one of the following effects:

- .1 Can be reasonably expected to cause additional significant damage to the property of the District or third parties.
- .2 Can be reasonably expected to significantly interfere with the District's or a third party's use of the project.

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4.5.5 In the event the Contractor fails to meet its warranty obligations, the District, at its opinion, shall have the right upon ten (10) days' prior written notice to the Contractor, to correct the defective work through its own forces or by retaining other contractors. In such event, the Contractor shall reimburse the District for all costs it incurs in obtaining the correction of the defective work.

4.6 TAXES

4.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof and the District shall not be liable therefor.

4.7 PERMITS, FEES AND NOTICES

4.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and comply with the Permit and all other permits and governmental licenses and inspections necessary for the proper execution and completion of the Work and which are legally required at the time the bids are received. Contractor shall obtain and pay the costs of obtaining the Permits. The Contractor shall comply with the terms and conditions of all permits and governmental licenses, and shall be solely responsible for paying all fees, fines, and restoration expenses imposed as a result of a failure to comply with the terms and conditions of such permits and governmental licenses.

4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. Without limiting the generality of the foregoing, the Contractor shall perform the Work in accordance with applicable county, VA/FHA requirements, specifications and regulations, Department of Transportation specifications, latest edition, and all other governmental agencies having jurisdiction.

4.7.3 It is the responsibility of the Engineer to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. Nevertheless, if the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the District in writing. In any event the Contractor shall in the performance of the Work comply with all applicable laws, regulations and permit conditions.

4.7.4 If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, he shall assume full responsibility therefor and shall bear all costs attributable thereto.

4.8 ALLOWANCES

4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the District may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

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4.8.2 Unless otherwise provided in the Contract Documents:

- .1 These allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes.
- .2 The Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance.
- .3 Whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

4.9 SUPERINTENDENT

4.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be so confirmed on written request in each case.

4.10 PROGRESS SCHEDULE

4.10.1 The Contractor, immediately after being awarded the Contract, shall prepare and submit for the District's and Engineer's information an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

4.11 PUBLIC RECORDS, DOCUMENTS, AND SAMPLES AT THE SITE

4.11.1 As required under Section 119.0701, Florida Statutes, Contractor shall (a) keep and maintain public records that ordinarily and necessarily would be required by the District in order to perform the service, including but not limited to the Drawings, Specifications, Addenda, Change Orders and other Modifications, marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples, (b) provide the public with access to public records on the same terms and conditions that the District would provide the records and at a cost that does not exceed the cost provided by law, (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law, (d) meet all requirements for retaining public records and transfer, at no cost, to the District all public records in possession of the Contractor upon completion of the Work or termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with the information technology systems of the District. Furthermore, the Contractor shall comply with the requirements of Chapter 119, Florida Statutes, including, but not limited to, section 119.0701, Florida Statutes.

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4.11.2 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 AT 1 (877) 276-0889, WRATHELLC@WHHASSOCIATES.COM, OR AT 2300 GLADES ROAD, SUITE 410W, BOCA RATON, FLORIDA 33431.

4.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material product or system for some portion of the Work.

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

4.12.4 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work, the work of the District or any separate contractor, or the Shop Drawings, Product Data and Samples required by the Contract Documents.

4.12.5 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

4.12.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Engineer's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.2.14 unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submission and the Engineer has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Engineer's approval thereof.

4.12.7 The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Engineer on previous submittals.

4.12.8 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Engineer as provided in Subparagraph 2.2.14. All such portions of the Work shall be in accordance with approved submittals.

4.13 USE OF SITE

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4.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment.

4.14 CUTTING AND PATCHING OF WORK

4.14.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

4.14.2 The Contractor shall not damage or endanger any portion of the Work or the work of the District or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the District or any separate contractor except with the written consent of the District and of such separate contractor. The Contractor shall not unreasonably withhold from the District or any separate contractor his consent to cutting or otherwise altering the Work.

4.15 CLEANING UP

4.15.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

4.15.2 If the Contractor fails to clean up at the completion of his Work, the District may do so as provided in Paragraph 3.4 and the costs thereof shall be charged to the Contractor.

4.15.3 Burning or burying of trash or debris on the site is strictly prohibited unless specifically authorized by the Engineer.

4.15.4 New work in extension of existing work shall correspond in all respects with that to which it connects, or to similar existing Work unless otherwise indicated or specified.

4.15.5 Existing work shall be cut, altered, removed or temporarily removed and replaced as necessary for the performance of the Contract. Work remaining in place damaged or defaced by reason of work done under the Contract shall be restored to a condition equal to its condition at the time of the award of the Contract.

4.15.6 Where Work is being conducted in or adjacent to occupied areas, the Contractor shall make every effort to keep construction noise and dust to a minimum. These areas shall be cleaned daily. The Engineer may require reasonable additional measures to safeguard adjacent areas from the effects of the performance of the Work.

4.16 COMMUNICATIONS

4.16.1 The Contractor shall provide the District a copy of all written communications to the Engineer required under the Contract. Further, the Engineer shall advise the District of all oral communications from Contractor which may affect the Contract Sum or the Contract Time. Further, the

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Engineer shall provide the District a copy of all written communications to the Contractor required under the Contract.

4.17 ROYALTIES AND PATENTS

4.17.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall hold the District harmless from loss on account thereof, except that the District shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Engineer.

4.18 INDEMNIFICATION

4.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the District and the Engineer and their agents and employees from and against all claims, damages, losses, fines and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or failing to comply with the terms and conditions of permits and governmental licenses or failing to comply with all applicable laws and regulations, or injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 4.18.

4.18.2 In any and all claims against the District or the Engineer or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.18 shall not be limited in any way by any limitation on the amount of type or damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.18.3 Notwithstanding anything to the contrary herein in the Contract, Contractor's indemnification hereunder shall not exceed Ten Million Dollars (\$10,000,000.00) and such limitation shall be part of the Specifications. All references to attorneys' fees in this Article shall include such attorneys' fees for appeals, administrative hearings, any arbitration proceedings, or any other legal proceedings. The first five hundred dollars (\$500.00) of the Contract Sum constitutes separate specific consideration for all indemnity obligations under the Contract Documents. The Contractor hereby acknowledges compliance with Florida Statute 725.06. In addition, so much of the money due to the Contractor under the Contract as is considered necessary by the District may be retained by the District or, in case no money is due, the Contractor's surety shall be liable hereunder until such suits, actions, or claims for injuries or damages, as aforesaid, shall have been settled or resolved by judicial determination or binding settlement. Provided further, it is specifically agreed between the parties that it is not intended by any of the provisions of any part of the Contract to make the public, or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

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ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITION

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

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

5.2 AWARD OF SUBCONTRACTORS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise previously furnished pursuant to the Contract Documents or the Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the District and the Engineer in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions or the Work. The Engineer will promptly reply to the Contractor in writing stating whether or not the District or the Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the District Engineer to reply promptly shall constitute notice of no reasonable objection. The provisions of this Subparagraph 5.2.1 are in addition to the requirement of the submission of the names of those designated subcontractors and material or equipment suppliers which must be submitted with the bidder's proposal.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the District or Engineer has made reasonable objection under the provisions or Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection. Provided that the Contractor shall be deemed to have waived any objection he may have to contracting with those persons and entities whose names were submitted in conjunction with his bid proposal.

5.2.3 If the District or the Engineer has a reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the District or the Engineer has no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued, however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required by Subparagraph 5.2.1.

5.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the District or Engineer makes reasonable objection to such substitution.

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5.3 SUBCONTRACTURAL RELATIONS

5.3.1 By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Contract Documents, assumes toward the District and the Engineer. Said agreement shall preserve and protect the rights of the District and the Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the District. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available each proposed Subcontractor prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such documents available to this Sub-subcontractors.

ARTICLE 6

WORK BY DISTRICT OR BY SEPARATE CONTRACTORS

6.1 DISTRICT'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 The District reserves the right to perform Work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other Work on the site under these or similar Conditions or the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the District, he shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other Work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate District Contractor Agreement.

6.1.3 The District will provide for the coordination of the work of his own forces and of each separate contractor with the work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.2.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the District and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the District or any separate contractor, the Contractor shall, prior to proceeding with the Work,

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promptly report to the Engineer any apparent discrepancies or defects in such other Work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the District's or separate contractors' Work as fit and proper to receive his work, except as to defects which may subsequently become apparent in such work by others.

6.2.3 Any costs caused by defective or ill-timed Work shall be borne by the party responsibility therefor.

6.2.4 Should the Contractor wrongfully cause damage to the work or property of the District, or to other work on the site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.5.

6.2.5 Should the Contractor cause damage to the work or property of any separate contractor, the Contractor shall, upon due notice, settle with such separate contractor by agreement if he will so settle. If such separate contractor sues the District on account of any damage alleged to have been sustained, the District at its sole option, may notify the Contractor, who shall defend such proceedings at the Contractor's expense. Whether or not the Contractor defends such action, if any judgment of award against the District arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the District for all such damage provided such liability of the Contractor shall not exceed Ten Million Dollars (\$10,000,000.00) and such limitation shall be a part of the Specifications. In any event, the Contractor shall reimburse the District for all of the District's attorneys' fees and court costs, which the District has incurred, including those of appeal.

6.3 DISTRICT'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required in Paragraph 4.15, the District may clean up and charge the cost thereof to the contractors responsible therefor or deduct the charges from the final payment as the Engineer shall determine to be just.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW AND VENUE.

7.1.1 This Contract and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida with venue in the County where the Project is located.

7.2 SUCCESSORS AND ASSIGNS

7.2.1 The District and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the District, nor shall the Contractor assign any moneys due or to become due to him

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hereunder, without the previous written consent of District. Provided, the District may assign the Contract without restriction.

7.3 WRITTEN NOTICE

7.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

7.4. CLAIMS FOR DAMAGES

7.4.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

7.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.5.1 The District requires that the Contractor furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. The cost of such bonds shall be included in the Contract Sum. Provided, no bond will be accepted from an insurance company with a general policyholder's rating of less than "A" and a financial rating of less than "AAA" as indicated in the Best's Insurance Guide. Attorneys-in-fact who sign performance and payment bonds must file with such bond a certified copy of their power of attorney to sign such bonds. Provided further, that the bonds shall be executed on the form set forth in Florida Statute Section 255.05, as amended, or on another form satisfactory to District amended as follows: "This Bond shall afford claimants thereunder, all the rights related thereto, including, but not limited to, the rights to recover attorneys' fees in the event any claim is made against this bond." The City of Venice shall be named as co-obligee on such bonds.

7.6 RIGHTS AND REMEDIES

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

7.6.2 No action or failure to act by the District, Engineer or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7.7 TESTS

7.7.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Engineer timely notice of its readiness so the Engineer may observe such inspection, testing or approval. The Contractor shall be responsible for the scheduling and the District for

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payment of all testing required for compliance and completion of the Work. Reimbursement for any testing failures shall be borne by the Contractor and it shall be the Contractor's responsibility to compensate the testing firm.

7.7.2 If the Engineer determines that any Work requires special inspection, testing, or approval which Subparagraph 7.7.1 does not include, she will upon written authorization from the District instruct the Contractor to order such special inspection or testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Engineer's additional services made necessary by such failure, otherwise the District shall bear such costs, and an appropriate Change Order shall be issued.

7.7.3 Required certificates of inspections, tests or approval shall be secured by the Contractor and promptly delivered by him to the Engineer.

7.7.4 If the Engineer is to observe the inspections, tests or approvals required by the Contract Documents, she will do so promptly and, where practicable, at the source of supply.

7.8 DUTY TO CONTINUE WORK

7.8.1 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any dispute or litigation, and the District shall continue to make payments to the Contractor in accordance with the Contract Documents.

7.9 DISTRICT'S RIGHT TO UTILIZE AND OCCUPY

Prior to Substantial Completion and so long as the District does not impede the Work of the Contractor and its subcontractors, employees, and agents, the District shall be allowed to utilize the Work for its intended purpose, and the District and its employees and agents shall be entitled to occupy portions of the Work and use such portions in the manner for which it is intended. Use and occupancy may, at the option of the District, include the installation of any equipment and furnishings belonging to the District.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

8.1.2 The Date of Commencement of the Work is the date set forth at Article 3 of the Agreement.

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8.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Engineer when construction is sufficiently complete, in accordance with the Contract Documents, so the District can occupy or utilize the work or designated portion thereof for the use for which it is intended. The criteria for determining the date for Substantial Completion, in addition to the above, shall include, but shall not be limited to, the following: (a) the ability of the District to occupy and use all the work without being impeded by any Work of the Contractor, except for punch list items determined by the District; (b) satisfactory completion of final inspections and all tests required by the county.

8.1.4 The term day as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

8.2 PROGRESS AND COMPLETION

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

8.2.2 The Contractor shall begin the Work on the Date of Commencement as defined in Subparagraph 8.1.2. The Contractor shall begin the process to obtain the Permits and begin mobilization on the Date of Commencement. All Permits and mobilization efforts shall be obtained and completed by _____. The Contractor shall begin work on the Site by _____. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.2.3 The Contractor shall furnish adequate forces, construction plans, shop drawings, and equipment and shall work such hours, including night shift, overtime operations, Sundays and Holidays in order to complete the Work in accordance with a progress schedule approved by the District. If the Contractor falls behind such schedule, Contractor shall take such steps as may be necessary to improve his progress by increasing the number of shifts and/or overtime operations, days of work and/or the amount of construction forces, all without additional cost to the District under the Contract. Failure of the Contractor to comply with these provisions shall be grounds for termination of the Contract by the District pursuant to Paragraph 14.2.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If a Contractor is delayed at any time in the progress of the Work by any act or neglect of the District, or by any employee thereof, or by any separate contractor employed by the District, or by changes ordered in the Work, or by prevention of performance because of governmental laws or regulation, or by fire or catastrophic weather condition, or unusual delays in delivery of materials and equipment beyond the control of Contractor, then the Contract Time shall be extended by Change Order for such reasonable time as the District may determine. Provided further that the Contractor specifically acknowledges that it has estimated and planned for a minimum of twenty (20) days of adverse weather conditions (preventing all Work), prior to entering into the Contract and accepting the limitations relating to time of Substantial Completion set forth in Article 3 of the Agreement. Accordingly, Contractor shall not be entitled to any change in the time required for Substantial Completion based on such adverse weather conditions until such conditions cause delay for a period of time in excess of the twenty (20) days planned.

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8.3.2 Any claim for extension of time shall be made in writing to the Engineer not more than fifteen (15) days after commencement of the delay; otherwise, it shall be waived. In the case of continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.

8.3.3 If no agreement is made stating the dates upon which interpretations as provided in Subparagraph 2.2.8 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen days after written request is made for them, and not then unless such claim is reasonable.

8.3.4 Time is of the essence in the Work provided for in these Contract Documents. Further, there will be, on the part of the District, considerable monetary damage in the event the Work provided for in these Contract Documents is not completed by the Contractor within the time fixed for Substantial Completion of the Work.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Applications for Payment, the Contractor shall submit to the Engineer a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule, unless objected to by the Engineer, shall be used only as a basis for the Contractor's Applications for Payment.

9.3 APPLICATION FOR PAYMENT

9.3.1 After the twenty-fifth (25th) day of the month, the Contractor shall submit to the Engineer an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the District or Engineer may require, and reflecting retainage, if any as provided elsewhere in the Contract Documents.

9.3.2 Payment will not be made on account of materials or equipment not incorporated in the Work.

9.3.3 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the District either by incorporation in the Construction or upon the receipt of payment by the Contractor, whichever occurs first free and clear of all liens, claims, security

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interests or encumbrances, hereinafter referred to in this Article 9 as “liens”; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.3.3.1 All Applications for Payment shall be submitted to the Engineer with original and three copies (one copy to the District), with supporting documentation as may be reasonably required by District to assure appropriate payment to all subcontractors and material men, in the form approved by the District. Such supporting documentation shall include but not be limited to waivers of liens and a sworn statement to the effect that all labor and materials included in the Application for Payment have been paid by the Contractor, unless otherwise listed. The sworn statement shall be on a standard form approved by the District which lists unpaid amounts, if any, to laborers, material suppliers and subcontractors. Certificates of Payment will not be processed for payment unless sworn statements are submitted with request for payment. Applications for Payment shall include each such item or heading determined by Paragraph 9.2, the percentage of completion of each such item or heading, the total amount of Work provided as of date of application of each such item or heading, the total amount of Work previously paid for each item or heading, the amount of Work required for each item or heading and such other information as the District may direct. In addition to the above, the Contractor, as a condition precedent to any progress of final payment to be made hereunder shall comply with Florida Mechanics’ Lien Laws, Chapter 713, Florida Statutes, now existing or as may hereafter be amended (“**Mechanics’ Lien Law**”). To the extent that there is a conflict between the obligations of District under the Contract Documents and the obligations of the District under the Mechanics’ Lien Law (which obligations under the Mechanics’ Lien law are imposed in order to afford District its protections under said law), the obligations of District under the Mechanics’ Lien Law shall prevail. The District shall withhold 5% retainage on each Application for Payment in accordance with section 218.735 (8) (b), Florida Statutes. The General Contractor shall pay any subcontractors in accordance with the retainage provisions outlined in section 218.735 (8), Florida Statutes.

9.3.4 A sworn “Contractor’s Affidavit” shall be submitted with each payment request in sufficient form for the District to determine Contractor’s right to payment in compliance with the Florida Mechanics’ Lien Law. Each payment request shall include properly executed waivers of lien in conformity with the information set forth on the properly completed Contractor’s Affidavit. In the event that the Engineer and the District are satisfied with the Contractor’s payment procedures, Engineer may accept partial waivers of the lien of subcontractors and suppliers who were included in the immediate preceding payment. Contractor shall submit the waivers on a current basis, but Engineer may not allow subcontractors and suppliers to be no more than one payment late in their partial waivers.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Engineer will, within seven (7) days after the receipt of the Contractor’s Application for Payment, either issue a Certificate for Payment to the District, with a copy to the Contractor, for such amount as the Engineer determines is properly due, or notify the Contractor in writing her reasons for withholding a Certificate as provided in Subparagraph 9.6.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Engineer to the District, based on her observations at the site as provided in Subparagraph 2.2.3 and the data

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comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of her knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in her Certificate); and that the Contractor is entitled to payment in the amount certified. However, by issuing a Certificate for Payment, the Engineer shall not thereby be deemed to represent that she has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that she has reviewed the construction means, methods, techniques, sequences or procedures, or that she has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

9.5 PROGRESS PAYMENTS

9.5.1 After the Engineer has issued a Certificate for Payment, the District shall make payment in the manner and within the time provided in the Contract Documents.

9.5.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the District, out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's work. The Contractor shall, by an appropriate agreement with each subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

9.5.3 The Engineer may, on request and at her discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Engineer on account of Work done by such Subcontractor.

9.5.4 Neither the District nor the Engineer shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

9.5.5 No Certificate for Payment, progress payment, or any partial or entire use or occupancy of the Project by the District, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6 PAYMENTS WITHHELD

9.6.1 The Engineer may decline to certify payment and may withhold her Certificate in whole or in part, to the extent necessary reasonably to protect the District, if in her opinion she is unable to make representations to the District as provided in Subparagraph 9.4.2. If the Engineer is unable to make representations to the District as provided in Subparagraph 9.4.2 and to certify payment in the amount of the Application, she will notify the Contractor as provided in Subparagraph 9.4.1. If the Contractor and the Engineer cannot agree on a revised amount, the Engineer will promptly issue a Certificate for Payment for the amount for which she is able to make such representations to the District. The Engineer may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, she may nullify the whole or any part of any Certificate of Payment previously issued, to such extent as may be necessary in her opinion to protect the District from loss because of:

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- .1 defective Work not remedied,
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims,
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
- .5 damage to the District or another contractor,
- .6 reasonable evidence that the Work will not be completed within the Contract time, or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

9.6.2 When the basis for withholding her Certificate as outlined in Subparagraph 9.6.1 is removed, the Engineer shall certify for payment the related amounts for which payment has been properly requested.

9.7 FAILURE OF PAYMENT

9.7.1 If the District does not pay the Contractor within ten (10) days after the date established in the Contract Documents any amount to which no written objection has been made by the District or the Engineer then the Contractor may upon seven (7) additional days written notice to the District, stop the Work until payment of the amount owing has been received. The Contract shall be increased by the amount of the Contractor's reasonable cost of shut down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Paragraph 12.3.

9.8 SUBSTANTIAL COMPLETION

9.8.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the District, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for submission to the Engineer a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents. When the Engineer on the basis of an inspection determines that the Work or designated portion thereof is substantially complete, she will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the District and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the District and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

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9.8.2 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Engineer, the District shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer will promptly make such inspection and, when she finds the Work acceptable under the Contract documents and the Contract fully performed, she will promptly issue a final Certificate for Payment stating that to the best of her knowledge, information and belief, and on the basis of her observations and inspection, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Engineer's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9.2 have been fulfilled. Notwithstanding anything in the Contract seemingly to the contrary, the Work shall be acceptable for maintenance, or approved for full operation, by all applicable governmental entities.

9.9.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Engineer (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the District might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety to final payment and (3), if required by the District, other data establishing payment or satisfaction for all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the District. If any Subcontractor refuses to furnish a release or waiver required by the District, the Contractor may furnish a bond satisfactory to the District to indemnify him against any such lien and to assure payment of such claim. If any such claim or lien remains unsatisfied after all payments are made the Contractor shall refund to the District all moneys that the latter may be compelled to pay in discharging such lien and so satisfying such claim, including all costs and reasonable attorneys' fees.

9.9.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Engineer so confirms, the District shall, upon application by the Contractor and certification by the Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, 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 the Contractor to the Engineer prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.9.4 The making of final payment shall constitute a waiver of all claims by the District except those arising from:

- .1 unsettled liens or claims of third parties,
- .2 faulty or defective work appearing after Substantial Completion,

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- .3 failure of the Work to comply with the requirements of the Contract Documents, or
- .4 terms of any special warranties required by the Contract Documents.

9.9.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

10.2 SAFETY OF PERSON AND PROPERTY

10.2.1 The Contractor shall take all responsible precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:

- .1 all employees on the Project and all other persons who may be affected thereby;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property of their protection from damage, injury or loss. Machinery, equipment, and other hazards shall be guarded in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable law.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities. Notwithstanding any provisions in the Contract to the contrary, the risk of loss on all materials and equipment incorporated in the Project or stored on the site shall be borne by the Contractor, who shall have the duty to protect the Project against damage, vandalism and malicious mischief.

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General Conditions of the District Contractor Agreement

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

10.2.5 The Contractor shall promptly remedy all damage or loss to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, any materialman, or anyone directly or indirectly employed by any of them, or by anyone for whose acts of them may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the District or Engineer or anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 4.18.

10.2.6 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the District and the Engineer.

10.2.7 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.2.8 The Contractor shall conduct his work so as to interfere as little as possible with private business or public travel. He shall, whenever necessary or required, maintain barricades, maintain lights, and take such other precautions as may be necessary to protect life and property, and he shall be liable for all damages occasioned in any way by his act or neglect or that of his agents or employees. The Contractor shall be responsible for the maintenance of traffic. If required by the Engineer, special policemen shall be used. It is the responsibility of the Contractor to ascertain from the Engineer, prior to submitting their bid, the extent and number of special policemen needed, as well as method and payment of said special policemen.

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.

ARTICLE 11

INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 During the term of the contract, the Contractor shall, at its own expense, purchase and maintain the following insurance in companies properly licensed in the state of Florida and satisfactory to the District:

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General Conditions of the District Contractor Agreement

- .1 Workers and Workmen's Compensation including occupational disease and employer's liability insurance.
 - a. Statutory-amounts and coverages required by Florida law.
 - b. Employer's liability-at least five hundred thousand dollars (\$500,000.00) per each accident.

- .2 Comprehensive General Liability, including coverage for direct operations, sublet Work, contractual liability and completed operations and products liability with limits not less than those stated above.
 - a. Bodily injury liability-including personal injury of five hundred thousand dollars (\$500,000.00) for each person and one million dollars (\$1,000,000.00) per occurrence.
 - b. Property damage liability of five hundred thousand dollars (\$500,000.00) for each occurrence and five hundred thousand dollars (\$500,000.00) in the aggregate.

Property Damage Liability Insurance shall include broad form coverage. Completed operations liability insurance shall continue in force for one year after the final acceptance of the Work.

- .3 If any of the Work is subcontracted, Contractor's Protective Liability Insurance with limits and specified above at 11.1.1.1 and 11.1.1.2.

- .4 Comprehensive Automobile Liability Insurance, including coverage for owned, nonowned and hired vehicles, for limits not less than listed below.
 - a. Bodily injury liability of five hundred thousand dollars (\$500,000.00) for each person and one million dollars (\$1,000,000.00) for each occurrence.
 - b. Property damage liability of two hundred fifty thousand dollars (\$250,000.00) for each occurrence.

- .5 In addition to all coverage above, the Contractor shall furnish Excess Liability Insurance covering all risks noted above, in the minimum amount of one million dollars (\$1,000,000.00) in the aggregate. Liability insurance for the comprehensive general liability and comprehensive automobile liability policies required above may be furnished for the full limits required or by combining the limits on such policies with the limits offered by the required Excess Liability Insurance policy.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater. All insurance shall be in the form of "occurrence" type insurance which shall provide coverage for all claims arising from events occurring during the term of the required policies regardless of when such claim is made. All

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insurance shall remain in force until date of final payment and shall name the District as an additional insured.

11.1.3 The insurance required by Subparagraph 11.1.1 shall include contractual liability insurance applicable to the Contractor's obligations under Paragraph 4.18.

11.1.4 Certificates of Insurance Acceptable to the District shall be filed with the District prior to commencement of the Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled or modified until at least thirty days' prior written notice has been given to the District and shall reflect that the "Rustic Oaks Community Development District" and the "City of Venice" are additional named insureds under all required policies.

11.2 DISTRICT'S LIABILITY INSURANCE

11.2.1 The District shall be responsible for purchasing and maintaining his own liability insurance and, at his option, may purchase and maintain such insurance as will protect him against claims which may arise from operations under the Contract.

11.3 PROPERTY INSURANCE

11.3.1 The Contractor waives all rights against (1) the District and his Subcontractors, Sub-subcontractors, agents and employees and (2) the Engineer and separate contractors, if any, and their sub-contractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by any property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the District as trustee. The Contractor, as appropriate, shall require of the Engineer, separate contractors, Subcontractors, and Sub-subcontractors by appropriate agreements, written where legally required for validity similar waivers each in favor of all other parties enumerated in this Subparagraph 11.3.1. All waivers of rights against the District under the terms of this Article 11, "Insurance", shall be deemed to include waivers of such rights against District's officers and employees.

11.3.2 The District as trustee shall have power to adjust and settle any loss with insurers.

11.4 LOSS OF USE OF INSURANCE

11.4.1 The District, at its option, may purchase and maintain such insurance as will insure it against loss of use of its property due to fire or other hazards, however caused. The District waives all rights of action against the Contractor for loss of use of its property, including consequential losses due to fire or other hazards however caused, to the extent covered by insurance, if any, obtained under this Paragraph 11.4. Provided, however, any such waiver of rights of action against the Contractor shall only be effective to the extent consistent with the District's insurance policies.

ARTICLE 12

CHANGES IN THE WORK

12.1 CHANGE ORDERS

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General Conditions of the District Contractor Agreement

12.1.1 A Change Order is a written order to the Contractor signed by the District and the Engineer, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time.

12.1.2 The District, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

12.1.3 The cost or credit to the District resulting from a change in the Work shall be determined in one or more of the following ways:

- .1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .3 by the method provided in Subparagraph 12.1.4.

12.1.4 If none of the methods set forth in Clauses 12.1.3.1, 12.1.3.2 or 12.1.3.3 is agreed upon, the Contractor, provided he receives a written order signed by the District, shall promptly proceed with the Work involved. The cost of such work shall then be determined by the Engineer on the basis of the reasonable expenditures and savings of those performing the Work attributable to the Change. In such case, and also under Clauses 12.1.3.3 and 12.1.3.4 above, the Contractor shall keep and present, in such form as the Engineer may prescribe, an itemized accounting together with the appropriate supporting data for inclusion in a Change Order. Unless otherwise provided, in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the District, payments on account shall be made on the Engineer's Certificate for Payment. The amount of credit to be allowed by the Contractor to the District for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Engineer. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change. The allowable percentage on Change Orders of the combined Contractor's and Subcontractor's profit and overhead shall not exceed twenty percent (20%) of the direct labor and material costs of the Work reflected by such Change Order.

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

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General Conditions of the District Contractor Agreement

12.2 CONCEALED CONDITIONS

12.2.1 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract, be encountered, the Contract Sum shall be equitably adjusted by Change Order upon claim by either party made within twenty (20) days after the first observance of the conditions. Notwithstanding the foregoing, however, differing soil types found below the surface of the ground shall not constitute a concealed condition for which an adjustment to the Contract Sum shall be made.

12.3 CLAIMS FOR ADDITIONAL COST

12.3.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Engineer written notice thereof within twenty (20) days after the occurrence of the event giving raise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such claim shall be valid unless so made. If the District and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the Engineer. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

12.3.2 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to Subparagraph 2.2.8, (2) any order by the District to stop the Work pursuant to Paragraph 3.3 where the Contractor was not at fault, (3) any written order for a minor change in the Work pursuant to Paragraph 12.4, or (4) failure of payment by the District pursuant to Paragraph 9.7, the Contractor shall make such claim as provided in Subparagraph 12.3.1.

12.3.3 If the District directs the Contractor, directly or indirectly, to perform Work as part of the Contract Documents, which Work the Contractor believes is not included therein, the Contractor shall advise the District in writing setting forth, in detail, the reasons for the Contractor's contention. Pending further advice from the District, the Contractor shall not proceed with the Work in dispute. After the District has investigated the reasons for the Contractor's contentions, and the District still believes that the disputed Work should be performed by the Contractor, the District will so advise the Contractor. Upon receipt of such advice from the District, the Contractor shall proceed with the disputed Work, forthwith, but the Contractor may, at the same time, advise the District he is doing so under protest. If it is determined by the Engineer that the Contractor is entitled to sums in addition to the Contract Sum on account of such disputed Work, then the District shall escrow the cost of said additions and said amount shall be disbursed upon final decision of the appropriate court of law. Upon payment to the escrow account of such sum, the Contractor waives any right to a lien on any portion of the Project for said sum. If the Engineer determines that the Contractor is not entitled to additions to the Contract Sum, no sum shall be escrowed and the Contractor shall be authorized to pursue his claim in a court of law. In any event, the Contractor shall proceed with the disputed Work during the pendency of any dispute as to his claim for additions to the Contract Sum.

12.4 MINOR CHANGE IN THE WORK

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General Conditions of the District Contractor Agreement

12.4.1 The Engineer will have authority to order minor change in the Work not involving an adjustment in the Contract Sum or an extension of the Contract time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the District and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any portion of the Work should be covered contrary to the request of the Engineer or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Engineer, be uncovered for her observation and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Engineer has not specifically requested to observe prior to being covered, the Engineer may request to see such work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the District. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by the District or a separate contractor as provided in Article 6, in which event the District shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct all Work rejected by the Engineer as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Engineer's additional services made necessary thereby.

13.2.2 If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the District of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the District to do so unless District has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. In any case wherein fulfilling the requirements of the Contract or of any warranty embraced in or required thereby the Contractor disturbs any Work under the Contract, he shall restore this disturbed Work to a condition satisfactory to the District and the extent provided by manufacturers' or materialmen's or subcontractors' warranties, he shall warrant such restored Work to the same extent as it was originally warranted under the Contract. The provision in this subparagraph regarding the survivability after termination of the Contract of the obligation to correct defective or improper Work shall not be construed to limit the survivability after termination of any other obligation under the Contract with is contemplated to be performed after the termination of the Contract.

Exhibit A

General Conditions of the District Contractor Agreement

13.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under Subparagraphs 4.5.1, 13.2.1 and 13.2.2, unless removal is waived by the District.

13.2.4 If the Contractor fails to correct defective or non-conforming Work as provided in Subparagraphs 4.5.1, 13.2.1 and 13.2.2, the District may correct it in accordance with Paragraph 3.4.

13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Engineer, the District may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the District may upon ten (10) additional days of written notice sell such Work at auction or private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Engineer's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the District.

13.2.6 The Contractor shall bear the cost of making good all work of the District or separate contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the District prefers to accept defective or non-conforming Work, it may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 If through no fault of Contractor, District fails to pay Contractor any sum finally determined under the Contract to be due, then Contractor may, upon fourteen (14) days written notice to District (and provided District does not within such notice period pay such sum) terminate the Contract.

Exhibit A

General Conditions of the District Contractor Agreement

Upon such termination, Contractor shall be entitled to payment for all Work performed according to its pro rata share of the Contract Sum (based on work completed in relation to all Work required under the Contract Documents). The provisions of this Paragraph

14.1 shall not relieve the Contractor of its obligations to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with the District.

14.1.2 In no event shall Contractor be entitled to recovery of damages or restitution in excess of the Contract Sum.

14.2 TERMINATION BY DISTRICT

14.2.1 District shall have the right to terminate the Contract upon failure of Contractor to cure any of the following defaults after fourteen (14) calendar days written notice:

- .1 Failure to commence the Work in accordance with the provisions of the Contract.
- .2 Failure to prosecute the Work to completion thereof in an efficient workmanlike, skillful, careful manner and in strict accordance with Contract Documents.
- .3 Failure to use adequate amount and quality of personnel or equipment to complete the Work without undue delay.
- .4 Allowing any condition to exist which will prevent the completion of the Work within the time specified in the Contract Documents or any extension thereof.
- .5 Failure to perform any of its obligations under the Contract Documents.
- .6 Failure to make prompt payments to its subcontractors, professional consultants, materialmen, or laborers.

In the event of the occurrences described above, the District may do one or more or the following at its sole option:

- .7 Terminate the Contract.
- .8 Exclude the Contractor from the site and take possession of the tools and equipment used by Contractor (without liability of the Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the site, or for which the District has paid Contractor and which are stored elsewhere and finish the Work as District may deem expedient.

14.2.2 Where Contractor's services have been terminated by District, termination shall not affect any rights of District against Contractor then existing or which may thereafter accrue. In particular, without limiting the generality of the foregoing, by such termination, the District shall not be deemed to have waived any rights to insist upon timely submittal of any claims by Contractor. Any retention or payment of money due Contractor by District will not release Contractor from liability.

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General Conditions of the District Contractor Agreement

14.2.3 In the event of termination by District, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the direct and indirect cost of completing Work, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the District. In finishing the Work, the District shall seek competitive bids for the Work performed, provided he shall not be required to obtain the lowest price for the Work performed.

14.2.4 In the event of a breach of the Contract by the Contractor in a manner other than a failure to substantially complete the Work within the time prescribed in the Contract Documents, the District shall be entitled to recover all damages incurred by the District as a result of said breach. In the event of such breach, District shall have the right to offset against any retainage or any other amounts due the Contractor any damages that the District has incurred. In the event of such breach, the District shall be paid for all costs, plus reasonable attorneys' fees (including attorneys' fees and costs for all appeals and administrative proceedings) resulting from the enforcement of the Contract through legal proceedings or otherwise. Any and all suits for any and every breach of the Contract shall be instituted and maintained in any court of competent jurisdiction.

ARTICLE 15

MISCELLANEOUS

15.1 The Contractor shall be required as a condition of payment to execute any certificates, payment application or other documents required by applicable construction loan or bond financing which will provide a source of funds for the payment of the Contract Sum. Further, to the extent that any construction loan agreement or bond documents (relating to such construction loan or bond financing) conflict with any of the provisions of the Contract Documents, such construction loan agreement or bond documents shall prevail. By way of illustration and not limitation, the Contractor agrees that:

- .1 All time periods, procedures, required documents, and other conditions of, or relating to, Payments and Completion under Article 9, hereof; and
- .2 The form, content, and named insured under any required insurance policies under Article 11, hereof,

shall be superseded by any conflicting provisions set forth by such construction loan agreement and/or bond documents.

15.2 In connection with the performance of the Work under the Contract, the Contractor agrees not to discriminate against any subcontractor, employee or applicant for employment because of race, sex, religion, color, national origin or physical handicap. The Contractor will take affirmative action to ensure that applications are employed, and that employees are treated during employment without regard to race, color, physical handicap, religion, sex or national origin. The aforesaid provisions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for

Exhibit A

General Conditions of the District Contractor Agreement

employees or applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause. The Contractor further agrees to insert the foregoing provision in all contracts hereunder, including contracts or agreement with labor unions and/or worker's representatives, except subcontractors for standard commercial supplies or raw materials.

15.3 **Scrutinized Companies.** Pursuant to Section 287.135, Florida Statutes, Contractor represents that in entering into this Agreement, the Contractor has not been designated as a "scrutinized company" under the statute and, in the event that the Contractor is designated as a "scrutinized company", the Contractor shall immediately notify the District whereupon this Agreement may be terminated by the District.

15.4 **Public Entity Crimes.** Pursuant to Section 287.133(3)(a), Florida Statutes:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

Contractor represents that in entering into this Agreement, the Contractor has not been placed on the convicted vendor list within the last 36 months and, in the event that the Contractor is placed on the convicted vendor list, the Contractor shall immediately notify the District whereupon this Agreement may be terminated by the District.

15.5 **E-Verification.**

Pursuant to Section 448.095(2), Florida Statutes, Contractor represents that Contractor is eligible to contract with the District and is currently in compliance and will remain in compliance, for as long as it has any obligations under this Agreement, with all requirements of the above statute; this includes, but is not limited to, registering with and using the United States Department of Homeland Security's E-Verify system to verify the work authorization status of all employees hired on or after January 1, 2021.

If the District has a good faith belief that the Contractor has knowingly violated Section 448.09(1), Florida Statutes, the District will terminate this Agreement as required by Section 448.095(2)(c), Florida Statutes.

If the District has a good faith belief that a subcontractor knowingly violated Section 448.09(1), Florida Statutes, but the Contractor otherwise complied with its obligations thereunder, the District shall promptly notify the Contractor and the Contractor will immediately terminate its contract with the subcontractor.

Exhibit A
General Conditions of the District Contractor Agreement

If this Agreement is terminated in accordance with this section, then the Contractor will be liable for any additional costs incurred by the District.

Exhibit B
To the Interlocal Agreement

District Contractor Agreement

This District Contractor Agreement (sometimes referred to as the “**Agreement**”) is made, effective as of _____, 2023 (the “**Effective Date**”)

BETWEEN the District: **RUSTIC OAKS COMMUNITY DEVELOPMENT DISTRICT**

and the Contractor: **CONTRACTOR’S NAME & ADDRESS**

The Project: **16” FORCE MAIN – KNIGHTS TRAIL ROAD**

The Engineer: **JORDAN A. SCHRADER, P.E.**
 Clearview Land Design, P.L.
 3010 W. Azeele Street, Suite 150
 Tampa, Florida 33609

ARTICLE 1

THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the General Conditions of the Contract attached as **Exhibit “A”**, the Drawings and Specifications prepared by _____, as amended and supplemented, attached as **Exhibit “B”**, the Contractor’s Proposal attached as **Exhibit “C”** and all Change Orders issued after execution of this Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 7.

ARTICLE 2

THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the construction of the Project, more particularly described in the Drawings and Specifications, and in such subsequent Drawings and Specifications, approved by District in accordance with the Contract Documents.

ARTICLE 3

TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The Work to be performed under this Contract shall be deemed commenced as of the Effective Date hereof which is sometimes referred to herein as the “**Date of Commencement**”. The time required for substantially completing the Work shall be referred to herein as the “**Contract Time**” and all work shall be completed no later than _____. The time allowed for the Contractor to achieve Substantial Completion shall be subject to adjustment as provided elsewhere in the Contract Documents.

ARTICLE 4

CONTRACT SUM

The District shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, a lump sum price of \$ _____ (the “**Contract Sum**”).

ARTICLE 5

PROGRESS PAYMENTS

Based upon Applications for Payment submitted to the Engineer by the Contractor and Certificates for Payment issued by the Engineer, the District shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents for the period ending the 25th day of the month. The District shall, not later than 25 days following the receipt of proper Applications and Certificates for Payment, pay the Contractor the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated in the Work for the period covered by the Application for Payment, less retainage of 5%, and less the aggregate of previous payments made by the District.

Payments due and unpaid under the Contract Documents shall bear interest from the date and at a rate provided pursuant to Part VII of Chapter 218, Florida Statutes, the “Local Government Prompt Payment Act”, as it may be amended.

ARTICLE 6

FINAL PAYMENT

Final payment shall be paid by the District to the Contractor within 30 days of when the Work has been completed, the Contract fully performed, and a final Certificate for Payment for the work has been issued by the Engineer. The amount of the final payment shall be the Contract

Sum, plus any approved change orders, less all progress payments previously paid pursuant to this Agreement.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

7.2 The Contract Documents, which constitute the entire agreement between the District and the Contractor, are listed in Article 1 and, except for Modifications issued after the execution of this Agreement, are enumerated as follows:

1. This Agreement between the District and the Contractor and including exhibits, herein sometimes referred to as the Agreement or the District Contractor Agreement.

2. General Conditions of the Contract for Construction herein sometimes referred to as the General Conditions or the Conditions of the Contract.

3. Drawings and Specifications attached thereto prepared by

4. Contractor's Proposal attached as **Exhibit "C"**

5. Such Drawings and Specifications subsequently approved by the District in accordance with the Contract Documents, provided the obligations of the parties regarding such subsequently approved Drawings and Specifications shall be subject to the provision of Article 12, Changes in the Work, of the General Conditions.

7.3 The Contractor acknowledges that the District is exempt from the Florida Sales and Use Tax (the "**Sales Tax**"). Accordingly, to minimize the cost of the Project to the District, the Contractor agrees to cooperate with the District and to allow the District to purchase materials in its name in order to avoid the Sales Tax that would otherwise be due on such purchases. All such purchases shall be from vendors specified by and acceptable to the District, and shall be coordinated with the Contractor's work schedule. All savings realized by the District as a result of such direct purchases shall inure to the benefit of the District, and the Contract Sum shall be reduced by the amount of the Sales Tax savings on all materials purchased because the Contract Sum was originally computed on the assumption that materials would be subject to Sales Tax. Further, all payments for materials made by the District shall be credited against the Contract Sum, and the Engineer shall issue Change Orders from time to time reflecting credit to the District for such amounts against the Contract Sum.

If, for any reason, the District or the Contractor shall subsequently be held liable for and subject to Sales Tax for materials purchased by the District, the District shall be solely responsible for paying such tax, together with any and all interest and penalties thereon, as well

as all costs and expenses reasonable incurred in the defense or resolution of any such claim, provided the Contractor, if authorized and acting as purchasing agent for the District, makes all materials purchases in strict accordance with the terms of this Agreement. In the event the Contractor shall for any reason fail to purchase materials subsequent to the date of this Agreement in accordance with the terms set forth herein, any Sales Tax expense or liability incurred in connection with such purchase shall be borne solely by the Contractor and shall be credited to the District against the Contract Sum. To the extent the District shall subsequently become liable for Sales Tax on any purchase of materials not made by the Contractor in strict accordance with the terms of this Agreement, the Contractor hereby indemnifies and agrees to hold the District harmless from and against any such Sales Tax related claim, including, but not limited to, the amount of the Sales Tax assessed, accrued interest, fines, costs and reasonable attorney's fees incurred by the District in connection with the levy and collection of the Sales Tax.

Notwithstanding anything in this Agreement to the contrary, all materials purchased by or manufactured for the District (the “**Materials**”) shall be subject to the following requirements:

1. The District shall purchase all Materials directly from the vendor, and in all cases work with the Contractor for selection of the vendor supplying the Materials, pursuant to its standard purchasing procedures.

2. The District shall issue or cause to be issued a “purchase order” for the Materials directly to the third party vendor (accompanied by the District's tax exempt certificate), and all invoices shall be prepared and sent by the vendor to the District.

3. The District shall make direct payment to the vendor for all Materials purchased.

4. The Contractor shall take title and possession of all Materials purchased directly from the vendor before they are incorporated into the District's property, and the Contractor shall assume all risk of loss from the time of purchase.

5. The Contractor shall purchase Insurance sufficient to fully protect the District against any loss or damage to the Materials, and shall maintain such insurance coverage until the Materials are fully incorporated into the Project. The cost of all insurance premiums and/or bonding related to the Materials shall be borne by the Contractor.

6. Compliance with all requirements of Florida Law and Rule 12A-1.094, Florida Rules of Administrative Procedure, as amended from time to time, necessary to exempt the District's purchases of Materials from Sales Tax.

The District's purchase of Materials will not in any manner impact or reduce Contractor's duty to warrant the Materials. The District may forward all repair, maintenance, non-confirming Materials, non-confirming Material calls or any other issues pertaining to the Materials to Contractor for resolution with the appropriate vendor. Contractor shall resolve all such calls or issues. If Contractor fails to adequately and properly perform inspections or otherwise

incorporates into the Project defective or non-confirming Materials, 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 District resulting from its incorporation of such Materials into the Project.

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

CONTRACTOR

**Rustic Oaks Community Development
District**

Name: _____
Title: _____

Name: _____
Chair of the Board of Supervisors