

## SECTION II

### STANDARD SPECIAL PROVISIONS

#### **1. BIDS**

1.1. All bid awards are subject to Section 2-72 Conflict of Interest, City of Naples Code of Ordinances, which states: "No public officer or employee shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of or is doing business with the city; nor shall an officer or employee have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. Any member of the city council or any city officer or employee who willfully violates this section shall be guilty of malfeasance in office or position and shall forfeit his office or position. Violation of this section with the knowledge, express or implied, of the person or corporation contracting with or making a sale to the city shall render the contract or sale voidable by the city manager or the city council."

1.2. In any case where a Bidder or interested Bidder wishes to protest either the results of or intended disposition of any bid, the Bidder or interested Bidder must file a written notice to the Purchasing Manager, explaining in detail the nature of the protest and the grounds on which it is based. This notice must be received by the Purchasing Manager within 48 hours (two business days) of the City's declaration of intent to award the bid. At that time the bid process shall be suspended until the protest procedure, herein described, has been completed. Each written protest must be accompanied by a bid protest bond in the form of a certified check, cashier's check or money order made payable to the City of Naples, in the amount not less than five percent (5%) of the lowest responsible bid, but not to exceed \$7,500. Upon timely receipt of the formal written protest, the City Purchasing Manager may take up to two business days to

attempt to resolve any protest. If there is no mutual solution the Purchasing Manager shall forward the formal written protest with any action taken to the City Attorney who shall act as the bid Protest Officer. The City Attorney shall hand down formal findings of fact and a written decision with regard to the validity or nonvalidity of the protest within ten (10) business days of the City's receipt of the formal written protest. Within twenty-four (24) hours of the receipt of the formal findings of fact and written decision, the City shall notify the protesting Bidder or protesting interested Bidder of the decision of the bid protest officer. Such notification may be transmitted via facsimile machine or certified return receipt required mail. The condition of the protest bond shall be that, should the protest be determined by the Protest Officer to be without merit or non-valid, the bond shall be forfeited to the City. If the protest is resolved by the Purchasing Manager, the Bond shall be returned to the protester in its entirety.

**1.3.** In submitting a bid, Bidder agrees not to use the results there from as a part of any commercial advertising.

**1.4.** 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 on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids 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 Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

## **2. INTENT OF CONTRACT DOCUMENTS**

**2.1.** It is the intent of the Contract Documents to describe a functionally complete project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being

required to produce the intended result shall be supplied whether or not specifically called for. When words which have a well known technical or trade meaning are used to describe work, materials or equipment, such works shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in affect at the time the Work is performed, except as may be otherwise specifically stated herein.

**2.2.** If before or during the performance of the Work Contractor discovers a conflict, error or discrepancy in the Contract Documents, Contractor immediately shall report same to the Engineer in writing and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from the Engineer. Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing any portion of the Work.

**2.3.** Drawings are intended to show general arrangements, design and extent of work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts, or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications or other Contract Document provisions, Contractor shall be required to comply with the provision which is the more restrictive or stringent requirement upon the Contractor, as determined by the Engineer. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.

**2.4. ORAL STATEMENTS:** No oral statement of any person shall modify or otherwise affect the terms, conditions or specifications stated in this contract. All modifications to the contract must be made in writing by the City of Naples.

### **3. INVESTIGATION AND UTILITIES**

**3.1.** Contractor shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the project area as a whole; topography and ground surface conditions; nature and quantity of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; and all other costs associated with such performance. The failure of Contractor to acquaint itself with any applicable conditions shall not relieve Contractor from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

**3.2.** Contractor shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project Site, said roadways, railways, drainage facilities and utilities being referred to in this Sub-Section 3.2 as the "Utilities". Contractor shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Contractor shall schedule and coordinate its Work around any such relocation or temporary service interruption. Contractor shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the Work.

#### **4. SCHEDULE**

**4.1.** The Contractor, within ten (10) calendar days after receipt of the Notice of Award, shall prepare and submit to the Engineer, for review and approval, a progress schedule for the Project (herein "Progress Schedule"). The Progress Schedule shall relate to all Work required by the Contract Documents and shall provide for expeditious and practicable execution of the Work within the Contract Time. The Progress Schedule shall indicate the dates for starting and completing the various stages of the Work.

**4.2.** The Progress Schedule shall be updated monthly by the Contractor. All monthly updates to the Progress Schedule shall be subject to the Engineer's review and approval. Contractor shall submit the updates to the Progress Schedule with its monthly Applications for Payment noted below. The Engineer's review and approval of the submitted Progress Schedule updates shall be a condition precedent to The City's obligation to pay Contractor.

#### **5. PROGRESS PAYMENTS**

**5.1.** Prior to submitting its first monthly Application for Payment, Contractor shall submit to Engineer, for review and approval, a schedule of values based upon the Contract Price, listing the major elements of the Work and the dollar value for each element. After its approval by the Engineer, this schedule of values shall be used as the basis for the Contractor's monthly Applications for Payment.

**5.2.** Prior to submitting first monthly Application for Payment, Contractor shall submit to the City a complete list of all its proposed subcontractors and materialmen, showing the work and materials involved and the dollar amount of each proposed subcontract and purchase order. The first Application for Payment shall be submitted no earlier than thirty (30) days after the Commencement Date.

**5.3.** If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site or at another location agreed to by the City in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or

other documentation warranting that the City has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the City's interest therein, all of which shall be subject to the City's satisfaction.

**5.4.** Contractor shall submit three (3) copies of its monthly Application for Payment to the Engineer on or before the 25th day of each month for work performed during the previous month. Invoices received after the 25th day of each month shall be considered for payment as part of the next month's application. Within ten (10) calendar days after receipt of each Application for Payment, the Engineer shall either:

5.4.1. indicate his approval of the requested payment,

5.4.2. indicate his approval of only a portion of the requested payment, stating in writing his reasons therefore; or

5.4.3. return the Application for Payment to the Contractor indicating, in writing, the reason for refusing to approve payment.

5.4.4. In the event of a total denial and return of the Application for Payment by the Engineer, the Contractor may make the necessary corrections and resubmit the Application for Payment. The City shall, within thirty (30) calendar days after the Engineer's approval of an Application for Payment, pay the Contractor the amounts so approved, provided, however, in no event that the City be obligated to pay any amount greater than that portion of the Application for Payment approved by the Engineer.

**5.5.** The City shall retain ten percent (10%) of the gross amount of each monthly payment request or ten percent (10%) of the portion thereof approved by the Engineer for payment, whichever is less. Such sum shall be accumulated and not released to Contractor until final payment is due.

**5.6.** Monthly payments to Contractor shall in no way imply approval or acceptance of Contractor's work.

## **6. PAYMENTS WITHHELD**

6.1. The Engineer may decline to approve any Application for Payment, or portions thereof, because of subsequently discovered evidence or subsequent inspections. The Engineer may nullify the whole or any part of any approval for payment previously issued and the City may withhold any agreement between the City and Contractor, to such extent as may be necessary in the City's opinion to protect it from loss because of:

**6.1.1.** Defective Work not remedied;

6.1.2. Third party claims filed or reasonable evidence indicating probable filing of such claims;

6.1.3. Failure of Contractor to make payment properly to subcontractors or for labor, materials or equipment;

6.1.4. Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount;

6.1.5. Reasonable indication that the Work will not be completed within the Contract Time;

6.1.6. Unsatisfactory prosecution of the Work by the Contractor, or

6.1.7. Any other material breach of the Contract Documents.

6.2 If these conditions in Subsection 6.1 are not remedied or removed, the City may, after three (3) days written notice, rectify the same at Contractor's expense. The City also may offset against any sums due Contractor the amount of any liquidated or unliquidated obligations of Contractor whether relating to or arising out of this Agreement or any other agreement between Contractor and the Engineer.

## **7. FINAL PAYMENT**

7.1. The City shall make final payment to Contractor within thirty (30) calendar days after the Work is finally inspected and accepted by both the City and the Engineer in accordance with Section 20.1 herein, provided that Contractor first, and as an explicit condition precedent to the

accrual of Contractor's right to final payment, shall have furnished the City with any and all documentation that may be required by the Contract Documents and the City.

7.2. Contractor's acceptance of final payment shall constitute a full waiver of any and all claims by Contractor against the City arising out of this Agreement or otherwise relating to the Project, except those previously made in writing and identified by Contractor as unsettled at the time of the final Application for Payment. Neither the acceptance of the Work nor payment by the City shall be deemed to be a waiver of the City's right to enforce any obligations of Contractor hereunder or to the recovery of damages for defective Work not discovered by the Engineer at the time of final inspection.

## **8. SUBMITTALS AND SUBSTITUTIONS**

**8.1.** Contractor shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Contractor shall submit all such materials at its own expense and in such form as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof.

**8.2.** Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by the City if sufficient information is submitted by Contractor to allow the City to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by the City from anyone other than Contractor and all such requests must be submitted by Contractor to the Engineer within thirty (30) calendar days after Notice of Award is received by Contractor.



**8.3.** If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make application to the Engineer for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of substantial completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the City for the Project) to adapt the design to the proposed substitute and whether or not the incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Engineer in evaluating the proposed substitute. The Engineer may require Contractor to furnish at Contractor's expense additional data about the proposed substitute.

**8.4.** If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the Engineer, if Contractor submits sufficient information to allow the Engineer to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the Engineer shall be the same as those provided herein for substitute materials and equipment.

**8.5.** The Engineer shall be allowed a reasonable time within which to evaluate each proposed substitute. The Engineer shall be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without the Engineer's and the City's prior written acceptance

which shall be evidenced by either a Change Order or an approved Shop Drawing. The City may require Contractor to furnish at Contractors expense a special performance guarantee or other surety with respect to any substitute.

## **9. DAILY REPORTS, AS-BUILTS AND MEETINGS**

**9.1.** Unless waived in writing, the Contractor shall complete and submit to the Engineer on a weekly basis a daily log of the Contractors work for the preceding week in a format approved by the Engineer. The daily log shall document all activities of Contractor at the Project Site including, but not limited to, the following:

9.1.1. Weather conditions showing the observed winds and direction during work hours, the amount of precipitation received on the Project Site, and any other weather conditions which adversely affect the Work;

9.1.2. Soil conditions which adversely affect the Work;

9.1.3. The hours of operation by Contractor's and subcontractor's personnel;

9.1.4. The number of Contractor's and subcontractor's personnel present and working at the Project Site, by subcontract and trade;

9.1.5. All equipment present at the Project Site, description of equipment use and designation of time equipment was used (specifically indicating any downtime);

9.1.6. Description of Work being performed at the Project Site, including work completed that day in reference to the nearest stations designated on the plans, if applicable;

9.1.7. Any unusual or special occurrences at the Project Site;

9.1.8. Materials received at the Project Site;

9.1.9. A list of all visitors to the Project Site; and

9.1.10. Any problems that might impact either the cost or quality of the Work or the time of performance.

**\*\*The daily log shall not take the place of any notice required to be given by Contractor to the City pursuant to the Contract Documents.**

**9.2.** Contractor shall maintain in a safe place at the Project Site one record copy of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, Change Orders, Work Directive Changes and Field Orders, as well as all written interpretations and clarifications issued by the Engineer, in good order and annotated to show all changes made during construction. The annotated drawings shall be continuously updated by the Contractor throughout the prosecution of the work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Work Directive Changes and Field Orders, and all concealed and buried installations of piping, conduit and utility services. All buried and concealed items, both inside and outside the Project Site, shall be accurately located on the annotated drawings as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The annotated drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color. The “As-Built” record documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to the Engineer for reference. Upon completion of the Work and as a condition precedent to Contractor’s entitlement to final payment, these “As-Built” record documents, samples and shop drawings shall be delivered to the Engineer by Contractor.

**9.3.** Contractor shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, which is later. The City, or any duly authorized agents or representatives of the City, shall have the right to audit, inspect and copy all such records and Agreement and during the five (5) year period noted above; provided however, such activity shall be conducted only during normal business hours.

## **10. CONTRACT TIME AND TIME EXTENSIONS**

**10.1.** Contractor shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and materialmen, as well as coordinating its

Work with all work of others at the Project Site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Contractor. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents, and the coordination of the City's suppliers and contractors as set forth in Paragraph 12.2 herein.

**10.2.** Should Contractor be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Contractor, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes or lockouts, Contractor shall notify the City in writing within forty-eight (48) hours after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Contractor may have had to request a time extension.

**10.3.** No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whole or in part, shall relieve Contractor of his duty to perform or give rise to any right to damages or additional compensation from the City. Contractor expressly acknowledges and agrees that it shall receive no damages for delay. Contractor's sole remedy, if any, against the City will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion.

**10.4.** The performance of work under the contract may be terminated by the City in whole or in part whenever the City determines that termination is in the City's best interest. Any such termination shall be effected by the delivery to the contractor of a written notice of termination of at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under the contract is terminated and the date upon which such termination becomes effective. After receipt of a notice of termination, except as otherwise

directed, the contractor shall stop work on the date of the receipt of the notice or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.

**10.5.** The City of Naples reserves the right to terminate the contract if the City determines that the contractor has failed to perform satisfactorily the work required, as determined by the City. In the event the City decides to terminate the contract for failure to perform satisfactorily, the City shall give to the contractor at least fifteen (15) days written notice before the termination takes effect. The fifteen-day period will begin upon the mailing of notice by the City. If the contractor fails to cure the default within the fifteen (15) days specified in the notice and the contract is terminated for failure to perform satisfactorily, the contractor shall be entitled to receive compensation for all reasonable, allocable and allowable contract services satisfactorily performed by the contractor up to the date of termination that were accepted by the City prior to the termination. In the event the City terminates the contract because of the default of the contractor, the contractor shall be liable for all excess costs that the City is required to expend to complete the work under contract.

## **11. CHANGES IN THE WORK**

**11.1.** The City shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, Contractor shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or as expressly set forth herein, no addition or changes to the Work shall be made except upon written order of the City, and the City shall not be liable to the Contractor for any increased compensation without such written order.

## **12. CLAIMS AND DISPUTES**

**12.1.** A claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between the City and Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim shall rest with the party making the Claim.

**12.2.** Claims by the Contractor shall be made in writing to the City within fortyeight (48) hours after the first day of the event giving rise to such Claim or else the Contractor shall be deemed to have waived the Claim. Written supporting data shall be submitted to the City within fifteen (15) calendar days after the occurrence of the event, unless the City grants additional time in writing, or else the Contractor shall be deemed to have waived the Claim.

**12.3.** The Contractor shall proceed diligently with its performance as directed by the City, regardless of any pending claim, action, suit or administrative proceeding, unless otherwise agreed to by the City in writing. The City shall continue to make payments in accordance with the Contract Documents during the pendency of any Claim.

## **13. OTHER WORK**

**13.1.** The City may perform other work related to the Project at the site by the City's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, written notice thereof will be given to Contractor prior to starting any such other work. If Contractor believes that such performance will involve additional expense to Contractor or require additional time, Contractor shall send written notice of that fact to the City within forty-eight (48) hours of being notified of the other work. If the Contractor fails to send the above required forty-eight (48) hour notice, the Contractor will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Tie or adjustment to the Contract Amount.

**13.2.** Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or the City, if the City is performing the additional work with the City's employees) proper and safe access to the site and a reasonable opportunity for execution of such work and shall properly connect and coordinate its Work with theirs. Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other Contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between the City and such utility owners and other contractors.

**13.3.** If any part of Contractor's Work depends for proper execution or results upon the work of any other contractor or utility owner (or The City), Contractor shall inspect and promptly report to Engineer in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Contractor's failure to report will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work.

#### **14. COMPLIANCE WITH LAWS**

**14.1.** Contractor agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to the Project, including but not limited to those dealing with taxation, worker's compensation, equal employment and safety (including, but not limited to, the Trench Safety Act, Chapter 553, Florida Statutes). If Contractor observes that the Contract Documents are at variance herewith, it shall promptly notify the Engineer in writing.

## **15. CLEANUP AND PROTECTIONS**

**15.1.** Contractor agrees to keep the Project Site clean at all times of debris, rubbish and waste materials arising out of the Work. At the completion of the Work, Contractor shall remove all debris, rubbish and waste materials from and about the Project Site, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Project Site clean and ready for occupancy by the City.

## **16. ASSIGNMENT**

**16.1.** Contractor shall not assign this Agreement or any part thereof, without the prior consent in writing of the City. If Contractor does, with approval, assign this Agreement or any part thereof, it shall require that its assignee be bound to it and assume toward Contractor all of the obligations and responsibilities that Contractor has assumed toward the City.

## **17. PERMITS, LICENSES AND TAXES**

**17.1.** Dredging permits from FDEP and USACE have been obtained by the City of Naples; all other permits, fees, licenses, etc are the responsibility of the contractor.

## **18. TERMINATION FOR DEFAULT**

**18.1.** Contractor shall be considered in material default of the Agreement and such default shall be considered cause for the City to terminate the Agreement, in whole or in part, as further set forth in this Section, if Contractor:

- (1) fails to begin the Work under the Contract Documents within the time specified herein; or
- (2) fails to properly and timely perform the Work as directed by the Engineer or as provided for in the approved Progress Schedule; or
- (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or
- (4) discontinues the prosecution of the Work; or



- (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or
- (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or
- (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or
- (8) makes an assignment for the benefit of creditors; or
- (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or
- (10) materially breaches any other provision of the Contract Documents.

**18.2.** The City shall notify Contractor in writing of Contractor's default(s). If the City determines that Contractor has not remedied and cured the default(s) within seven (7) calendar days following receipt by Contractor of said written notice, then the City, at its option, without releasing or waiving its rights and remedies against the Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Contractor's right to proceed under the Agreement, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Contractor, take assignments of any of Contractor's subcontracts and purchase orders, and complete all or any portion of Contractor's Work by whatever means, method or agency which the City, in its sole discretion, may choose.

**18.3.** If the City deems any of the foregoing remedies necessary, Contractor agrees that it shall not be entitled to receive any further payments hereunder until after the Project is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including Engineer and attorney's fees) or damages incurred by The City incident to such completion, shall be deducted from the Contract Amount, Contractor agrees to pay promptly to the City on demand the full amount (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such

costs, expenditures and damages incurred by the city to complete the Work, such excess shall be paid to the Contractor. The amount to be paid to the Contractor shall be approved by the Engineer, upon application, and this obligation for payment shall survive termination of the Agreement.

**18.4.** The liability of Contractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by The City in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefore or re-letting the Work, and in settlement, discharge or compromise of any claims, demands suits, and judgments pertaining to or arising out of the Work hereunder.

**18.5.** If, after notice of termination of Contractor's right to proceed pursuant to this Section, it is determined for any reason that Contractor was not in default, or that its default was excusable, or that the City is not entitled to the remedies against Contractor provided herein, then Contractor's remedies against the City shall be the same as and limited to those afforded Contractor under Section 19 below.

## **19. TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION**

**19.1.** The City shall have the right to terminate this Agreement without cause upon seven (7) calendar days written notice to Contractor. In the event of such termination for convenience, Contractor's recovery against the City shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but Contractor shall not be entitled to any other or further recovery against the City, including, but not limited to, damages or any anticipated profit on portions of the Work not performed.

**19.2.** The City shall have the right to suspend all or any portions of the Work upon giving Contractor not less than two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Contractor's sole and exclusive remedy shall be to

seek an extension of time to its schedule in accordance with the procedures set forth in the Contract Documents. In no event shall the Contractor be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds six (6) months, the Contractor shall have the right to terminate the Agreement with respect to that portion of the Work which is subject to the ordered suspension.

**19.3.** The City of Naples shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by the contractor. If the City reasonably rejects staff or subcontractors, the contractor must provide replacement staff or subcontractors satisfactory to the City in a timely manner and at no additional cost to the City. The day-to-day supervision and control of the contractor's employees and sub-contractors is the responsibility solely of the contractor.

## **20. COMPLETION**

**20.1.** When the entire Work (or any portion thereof designated in writing by the City) is ready for its intended use, Contractor shall notify the Engineer in writing that the entire Work (or such designated portion) is substantially complete and request that the Engineer issue a Certificate of Substantial completion (or Certificate of Partial Substantial Completion). In all cases, work certified to be completed by the Contractor shall be supported by certified surveys. Refer to Technical Specifications Section TS-6.2. Within a reasonable time thereafter, the City, Contractor and Engineer shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If the City and Engineer do not consider the Work (or designated portion) substantially complete, the Engineer shall notify Contractor in writing giving the reasons therefor. If the City and Engineer consider the Work (or designated portion) substantially complete, the Engineer shall prepare and deliver to Contractor a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date of Substantial Completion for the entire Work (or designated portion thereof) and include a tentative punchlist of items to be completed or corrected by Contractor before final payment.

The City shall have the right to exclude Contractor from the Work and Project Site (or designated portion thereof) after the date of Substantial Completion, but the City shall allow Contractor reasonable access to complete or correct items on the tentative punchlist.

**20.2.** Upon receipt of written certification by Contractor that the Work is completed in accordance with the Contract Documents and is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer will make such inspection and, if he finds the Work acceptable and fully performed under the Contract Documents, he shall promptly issue a final Certificate for Payment, recommending that, on the basis of his observations and inspection, and the Contractor's certification that the Work has been completed in accordance with the terms and conditions of the Contract Documents, that the entire balance found to be due Contractor is due and payable. Neither the final payment nor the retainage shall become due and payable until Contractor submits: all survey information and supporting data establishing payment or satisfaction of all obligations, such as receipt, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by the City. The City reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though the Engineer may have issued his recommendations. Unless and until the City is completely satisfied, neither the final payment nor the retainage shall become due and payable.

## **21. WARRANTY**

**21.1.** Contractor shall obtain and assign to the City all express warranties given to Contractor or any subcontractors by any materialmen supplying materials, equipment or fixtures to be incorporated into the project. Contractor warrants to the City that any materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Contractor further warrants to the City that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used,

cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. If, within one (1) year after final completion, any Work is found to be defective or not in conformance with the Contract Documents, Contractor shall correct it promptly after receipt of written notice from the City. Contractor shall also be responsible for any pay for replacement or repair of adjacent materials or Work which may be damaged as a result of such replacement or repair. These warranties are in addition to those implied warranties to which the City is entitled as a matter of law.

## **22. TESTS AND INSPECTIONS**

**22.1.** The City of Naples, its respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all time to the Work, whether the work is being performed on or off of the Project Site, for their observation, inspection and testing. Contractor shall provide proper, safe conditions for such access. Contractor shall provide Engineer with timely notice of readiness of the Work for all required inspections, tests or approvals.

**22.2.** If the Contract Documents or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project requires any portion of the Work to be specifically inspected, tested or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to the Engineer and The City of Naples.

**22.3.** If any Work that is to be inspected, tested or approved is covered without written concurrence from the Engineer, such Work must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness to respond to such notice. If any Work is covered contrary to

written directions from Engineer, such Work must, if requested by Engineer, be uncovered for Engineer's observation and be replaced at Contractor's sole expense. The Engineer's onsite inspector will conduct noise monitoring during construction. The City will provide a background decibel level that is not to be exceeded by more than five (5) decibels.

**22.4.** The City shall charge to Contractor and may deduct from any payments due Contractor all engineering and inspection expenses incurred by the City in connection with any overtime work. Such overtime work consisting of any work during the construction period beyond the regular eight (8) hour day and for any work performed on Saturday, Sunday or holidays.

**22.5.** Neither observations nor other actions by the Engineer not inspections, tests or approvals by others shall relieve Contractor from Contractor's obligations to perform the Work in accordance with the Contract Documents.

### **23. DEFECTIVE WORK**

**23.1.** Work not conforming to the requirements of the Contract Documents shall be deemed defective Work. If required by Engineer, Contractor shall as directed, either corrects all defective Work, whether or not fabricated, installed or completed, or if the defective Work has been rejected by Engineer, remove it from the site and replace it with undefective Work. Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including, but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby, and shall hold the City harmless for same.

**23.2.** If the City or Engineer consider it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at the City's or Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection or tests as the Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including, but not limited to, fees and charges of

engineers, architects, attorneys and other professionals), and the City shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Amount and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

**23.3.** If any portion of the Work is defective, or Contractor fails to supply sufficient skilled workers with suitable materials or equipment, or fails to finish or perform the Work in such a way that the completed Work will conform to the Contract Documents, Engineer may order contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Engineer to stop the Work shall not give rise to any duty on the part of the City or Engineer to exercise this right for the benefit of Contractor or any other party.

**23.4.** Should the City determine, at its sole opinion, it is in the City's best interest to accept defective Work, the City may do so. Contractor shall bear all direct, indirect and consequential costs attributable to the City's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Amount. If the City accepts such defective Work after final payment, Contractor shall promptly pay the City an appropriate amount to adequately compensate the City for its acceptance of the defective Work.

**23.5.** If Contractor fails, within a reasonable time after the written notice from the City or Engineer, to correct defective Work or to remove and replace rejected defective Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any of the provisions of the Contract Documents, the City may, after seven (7) days written notice to Contractor, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, the

City may exclude Contractor from any or all of the Project Site, take possession of all or any part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Project Site and incorporate in the Work all materials and equipment stored at the Project Site or for which the City has paid Contractor but which are stored elsewhere. Contractor shall allow the City and its respective representatives, agents, and employees such access to the Project Site as may be necessary to enable the City to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of the City in exercising such rights and remedies shall be charged against Contractor, and a Change Order shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect and consequential costs shall include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement or work of others destroyed or damaged by Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the City of The City's rights and remedies hereunder.

## **24. SUPERVISION AND SUPERINTENDENTS**

**24.1.** Contractor shall plan, organize, supervise, schedule, monitor, direct and control the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the contract documents. Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents. Contractor shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without prior written notice to the Engineer except under extraordinary circumstances. The superintendent shall be Contractor's representative at the Project Site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as finding as if given to the



Contractor. The City shall have the right to direct Contractor to remove and replace its Project superintendent, with or without cause.

## **25. PROTECTION OF WORK**

**25.1.** Contractor shall fully protect the Work from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. If Contractor or any one for whom Contractor is legally liable for is responsible for any loss or damage to the Work, or other Work or materials of the City or the City's separate contractors, Contractor shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Contractor.

**25.2.** Contractor shall not load or permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

**25.3.** Contractor shall not disturb any benchmark established by the Engineer with respect to the Project. If Contractor, or its subcontractors, agents or anyone for whom Contractor is legally liable, disturbs the Engineer's benchmark, Contractor shall immediately notify the City and Engineer. The Engineer shall reestablish the benchmark and Contractor shall be liable for all costs incurred by the City associated therewith.

## **26. EMERGENCIES**

**26.1.** In the event of an emergency affecting the safety or protection of persons or the Work or property at the Project Site of adjacent thereto, Contractor, without special instructions or authorization from the City or Engineer is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Engineer written notice within forty-eight (48) hours after the occurrence of the emergency, if Contractor believes that after the occurrence of the emergency any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Engineer determines that a change in the Contract Documents is

required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Contractor fails to provide the forty-eight (48) hour written notice noted above, the Contractor shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time.

## **27. USE OF PREMISES**

**27.1.** Contractor shall confine all construction equipment, the storage of materials and equipment and the operations of workers to the Project Site and land and areas identified in and permitted by the Contract Documents and other lands and areas permitted by law, rights of way, permits and easements, and shall not unreasonably encumber the Project Site with construction equipment or other material or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or any land or areas contiguous thereto, resulting from the performance of the Work.

## **28. SAFETY**

**28.1.** Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

28.1.1 All employees on the work and other persons and/or organizations who may be affected thereby;

28.1.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site; and

28.1.3 Other property on Project Site or adjacent thereto, including trees, shrubs, walks, pavements, roadways, structures, utilities and any underground structures or improvements not designated for removal, relocation or replacement in the Contract Documents.

**28.2.** Contractor shall comply with all applicable code laws, ordinances, rules and regulations of any public body having jurisdiction for the safety or persons or property or to protect them from damage, injury or loss. Contractor shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of underground structures and improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by the City has occurred.

**28.3.** Contractor shall designate a responsible representative at the Project Site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to The City.

## **29. PROJECT MEETINGS**

**29.1.** Prior to the commencement of Work, the Contractor shall attend a preconstruction conference with the Engineer and others as appropriate to discuss the Progress Schedule, procedures for handling shop drawings and other submittals, and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work. During the prosecution of the Work, the Contractor shall attend any and all meetings convened by the Engineer or the City with respect to the Project, when directed to do so. Contractor shall have its subcontractors and suppliers attend all such meetings (including the preconstruction conference) as may be directed by the City or Engineer.

## **30. TRAFFIC CONTROL PLAN**

**30.1.** A traffic control plan to support the Contractor's operations shall be submitted at least 72 hours prior to commencing work that shall conform to the Florida Department of

Transportation's "Manual on Traffic Control and Safe Practices" which shall be obtained by the Contractor at his expense.

### **31. HOURS OF WORK**

**31.1.** All dredge activity will be conducted during daylight hours from one halfhour after sunrise to one half-hour before sunset. Hours of work may be altered at any time at the discretion of the City.

### **32. TAX EXEMPTION**

**32.1.** The City of Naples is exempt from the payment of sales or use tax. The tax exemption certificate number is: 21-07.

### **33. INDEMNIFICATION AND INSURANCE**

**33.1.** Contractor agrees to save harmless, indemnify and defend Owner from any and all claims, losses, penalties, demands, judgments, and costs of suite (including the costs of any appeals), including attorneys' fees and paralegals' fees, for any expense, damage or liability incurred by any of them, whether for personal injury, property damage, direct or consequential damages, or economic loss, arising directly or indirectly on account of or in connection with the Work done by Contractor under this Agreement or by any person, firm or corporation to whom any portion of the Work is subcontracted by Contractor or resulting from the use by Contractor, or by any one for whom Contractor is legally liable, of any materials, tools, machinery or other property of Owner. This provision is intended to apply even if the injury or damage is caused in whole or in part by any act, omission or default of the Owner or their consultants, agent's officers and employees. Owner and Contractor agree the first \$100.00 of the Contract Amount paid by Owner to Contractor shall be given as separate consideration for this indemnification, and any other indemnification of Owner by Contractor provided for within the

Contract Documents, the sufficiency of such separate consideration being acknowledged by Contractor by Contractor's execution of the Agreement.

**33.2.** The Contractor's obligation to indemnify and defend the owner under paragraph 32.1 of this contract shall not be limited in any way by the agreed upon contract price as shown in this contract or the Contractor's limit of, or lack of, sufficient insurance protection.

**33.3.** Contractor shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in the Insurance Requirements of the Agreement. Further, the Contractor shall at all times comply with all of the terms, conditions, requirements and obligations set forth under these requirements.

#### **34. ASSURANCES WITH REGARD TO OWNER'S EMPLOYEES (City Construction Agreement)**

**34.1.** Contractor agrees not to employ or offer to employ any Elected Officer or City Managerial Employee who in any way deals with, coordinates on, or assists with, the construction services provided in this Agreement, for a period of two (2) years after termination of all provisions of this Agreement.

**34.2.** If Contractor violates the provisions of paragraph 33.1 above, Contractor shall be required to pay damages to Owner in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee from or on behalf of the Contractor, or an amount equal to the former Elected Officer's or City Managerial Employee's last two (2) years of gross compensation from Owner, whichever is greater.

**34.3.** For purposes of this section, the terms "Elected Officer" shall mean any member of the City Council and "City Managerial Employee" shall mean the City Manager, Assistant City Manager, City Clerk and any City Department Head or Director.

#### **35. ASSURANCES WITH REGARD TO THIRD PARTIES**

**35.1.** Contractor agrees not to provide services for compensation to any other party other than Owner on the same subject matter, same project, or scope of services with approval from the City Council of Owner.

**35.2.** Except as otherwise provided in this Agreement, Contractor agrees not to disclose or use information not available to members of the general public and gained by reason of Contractor's contractual relationship with Owner for the special gain or benefit of Contractor, or for the special gain or benefit of any other person or entity.

THE CITY OF NAPLES IS AN EQUAL OPPORTUNITY EMPLOYER