



**PASCO COUNTY BOARD OF COUNTY
COMMISSIONERS
PURCHASING DEPARTMENT
8919 GOVERNMENT DRIVE
NEW PORT RICHEY, FLORIDA 34654
TELEPHONE: (727) 847-8194
FACSIMILE: (727) 847-8065
www.PascoCountyFL.net**

**INVITATION TO BID
BID NO. 07-169**

PAVING ASSESSMENT PROJECTS 4

(Foxwood, Foggy Ridge Parkway, Leonard Road, Ardsley Lane, Lakewood Estates, Valley View Estates Veterans Village Part 4, Sea Forest, Cranbrook Place, and Virginia City)

The Pasco County Purchasing Department will receive sealed bids until **2:00 p.m.**, local time (our clock), on **JULY 31, 2007**, in the Pasco County Purchasing Department, 8919 Government Drive, New Port Richey, Florida 34654. Bids received after this time will not be accepted. Bids will be publicly opened and read at the above-stated time and date. All interested parties are invited to attend. Bidders shall submit one (1) original of the submitted bid.

The projects include roadway, excavation, asphalt and concrete work, utility, signing, pavement marking, striping, restoration, and other related work. Please refer to the contract documents and specifications for a complete description of the work. The estimated total cost for all projects is \$1,800,000.00.

Bid documents including the contract document and specifications may be obtained from the Pasco County Purchasing Department at the above-listed address, or downloaded at www.PascoPurchasing.com at no cost.

Bid, performance, and payment surety are required for this project. Please refer to the contract document and specifications for complete requirements.

The Board of County Commissioners of Pasco County, Florida, reserves the right to reject any and all bids received.

Scott Stromer
Purchasing Director



**CONTRACT DOCUMENTS
AND SPECIFICATIONS FOR:**

PAVING ASSESSMENT PROJECTS 4

**(Foxwood, Foggy Ridge Parkway, Leonard Road, Ardsley
Lane, Lakewood Estates, Valley View Estates, Veterans
Village Part 4, Sea Forest, Cranbrook Place and Virginia City)**

Bid No. 07-169

**PASCO COUNTY BOARD OF COUNTY COMMISSIONERS
PURCHASING DEPARTMENT
8919 GOVERNMENT DRIVE
NEW PORT RICHEY, FLORIDA 34654-5598
Telephone: 727-847-8194
Facsimile: 727-847-8065**

TABLE OF CONTENTS

PART I - BIDDING REQUIREMENTS	PAGE
Instructions to Bidders	IB 1 - 11
 PART II - CONDITIONS OF THE CONTRACT	
A. General Conditions	GC 1 - 54
ARTICLE 1 - CONTRACT DOCUMENTS	GC - 1
ARTICLE 2 - DEFINITIONS	GC - 2
ARTICLE 3 - PRELIMINARY MATTERS	GC - 8
3.1 Delivery of Bonds and Other Documents.	GC - 8
3.2 Commencement of Contract Time.	GC - 8
3.3 Commencement of the Project.	GC - 8
3.4 Before Commencement of Each Part of the Work.	GC - 8
3.5 Qualifications of Subcontractors, Vendors, and Suppliers.	GC - 9
3.6 Pre-construction Conference.	GC - 9
ARTICLE 4 - CONTRACT DOCUMENTS: INTENT, CONFLICTS, INTERPRETATION, AND REUSE	GC - 10
4.1 Precedence.	GC - 10
4.2 Reuse of Documents.	GC - 10

ARTICLE 5 - PROJECT CONDITIONS	GC - 10
5.1 Availability of Lands.	GC - 10
5.2 Unknown or Concealed Conditions.	GC - 11
5.3 Reference Points.	GC - 11
5.4 Existing Utilities.	GC - 12
ARTICLE 6 - BONDS, INSURANCE AND INDEMNIFICATION	GC - 12
6.1 Performance and Payment Bonds.	GC - 12
6.2 Warranty Bond.	GC - 13
6.3 Insurance of the CONTRACTOR.	GC - 13
6.4 Untimely Submission.	GC - 16
6.5 Indemnification.	GC - 16
ARTICLE 7 – RESPONSIBILITIES OF THE CONTRACTOR	GC - 18
7.1 Supervision and Superintendence.	GC - 18
7.2 Labor, Materials, and Equipment.	GC - 18
7.3 Substitute Materials or Equipment.	GC - 19
7.4 Concerning Subcontractors.	GC - 19
7.5 Patent Fees and Royalties.	GC - 20
7.6 Permits.	GC - 20
7.7 Laws and Regulations.	GC - 20

7.8	Use of Premises.	GC - 21
7.9	Record Drawings.	GC - 21
7.10	Safety and Protection	GC - 21
7.11	Emergencies.	GC - 22
7.12	Submittals and Samples.	GC - 22
7.13	Cleaning Up.	GC - 24
ARTICLE 8 – WORK BY OTHERS		GC - 24
ARTICLE 9 – RESPONSIBILITIES OF THE COUNTY		GC - 25
ARTICLE 10 – STATUS OF THE PROFESSIONAL DURING CONSTRUCTION		GC - 25
10.1	County's Representative.	GC - 25
10.2	Visits to the Site.	GC - 26
10.3	Clarifications and Interpretations.	GC - 26
10.4	Rejecting Defective Work.	GC - 26
10.5	Resident Engineer.	GC - 26
10.6	Decisions on Disagreements.	GC - 26
10.7	Limitations on the Responsibilities of the PROFESSIONAL.	GC - 26
ARTICLE 11 – CHANGES IN THE WORK		GC - 27
ARTICLE 12 – CHANGE OF CONTRACT PRICE		GC - 28
12.1	The Contract Price.	GC - 28

12.2	Cost of Work.	GC - 30
12.3	Fee of CONTRACTOR.	GC - 31
12.4	Cash Allowance.	GC - 32
ARTICLE 13 – CHANGE OF CONTRACT TIME		GC - 32
ARTICLE 14 – WARRANTY AND GUARANTEE: ACCEPTANCE OF DEFECTIVE WORK		GC - 34
14.1	Warranty and Guarantee.	GC - 34
14.2	Tests and Inspections.	GC - 35
14.3	Access to the Work.	GC - 35
14.4	Uncovering the Work.	GC - 36
14.5	Stop Work.	GC - 36
14.6	Correction or Removal of Defective Work.	GC - 36
14.7	Acceptance of Defective Work.	GC - 37
14.8	Neglected Work by Contractor	GC - 37
ARTICLE 15 – PAYMENT AND COMPLETION		GC - 38
15.1	Schedule of Values.	GC - 38
15.2	Draft Payment Requests and Applications for Payment.	GC - 38
15.3	Retainage.	GC - 41
15.4	Warranty of Title of CONTRACTOR.	GC - 41

15.5	Rejection of Applications for Payment By the DIRECTOR	GC - 42
15.6	Substantial Completion.	GC - 42
15.7	Partial Utilization.	GC - 43
15.8	Final Completion	GC - 43
15.9	Application for Final Payment.	GC - 44
15.10	Approval of Final Payment.	GC - 44
15.11	Continuing Obligation of the CONTRACTOR.	GC - 45
15.12	Waiver of Claims.	GC - 45
15.13	Liquidated Damages.	GC - 45
ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION		GC - 45
16.1	Suspension of Work.	GC - 45
16.2	Termination of Work	GC - 46
16.3	Cross – Default	GC – 48
ARTICLE 17 – MISCELLANEOUS		GC - 49
ARTICLE 18 – MAINTENANCE OF RECORDS		GC - 50
ARTICLE 19 - APPRENTICES AND TRAINEES		GC - 50
ARTICLE 20 - EQUAL OPPORTUNITY COMPLIANCE PROVISIONS		GC - 50
ARTICLE 21 – ALLOWANCES		GC - 52

21.1 Allowance Categories.	GC - 52
21.2 Authorized Expenditures and Allocations of Time.	GC - 52
21.3 Pricing of Allowance Work.	GC - 52
21.4 Allocation of Contract Time.	GC - 53
21.5 Disputes as to Price or Time.	GC - 53
ARTICLE 22 – DISPUTE RESOLUTION	GC - 53
22.1 Mediation.	GC - 53
22.2 Governing Law.	GC - 54
22.3 Venue and Jurisdiction.	GC - 54
22.4 Notice of Claim; Contractor Books and Records.	GC -54
Exhibits To Subpart A:	
Exhibit A - PERFORMANCE BOND FORM	PFB 1 - 6
Exhibit B - PAYMENT BOND FORM	PYB 1 - 6
Exhibit C - CERTIFICATE OF INSURANCE	
Exhibit D - ENDORSEMENT	
Exhibit E - APPLICATION FOR PAYMENT - FORM	1 - 8
Attachment 1	
Attachment 2	
Schedule of Values	
Exhibit F - CONTRACTOR’S AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS.	1 - 2

Exhibit G - SUBCONTRACTOR STATEMENT OF SATISFACTION	1 - 2
Exhibit H - CHANGE ORDER FORM	CO 1 - 4
Exhibit I - CONSENT OF SURETY TO CHANGE ORDER.	CSCO 1 - 2
Exhibit J - ALLOWANCE AUTHORIZATION RELEASE (AAR) FORM	AAR 1 - 2
Exhibit K - CONSENT OF SURETY TO FINAL PAYMENT	CSFP 1 - 2
B. Special Conditions	SC 0 – SC 4
C. Technical Specifications	TS 0 – TS 29
Special Provisions.....	SP 1 – SP 9
Attachments - Maps.....	

PART III - BID PROPOSAL

Bid Proposal	BP 1 – 21
Exhibit A BID BOND FORM	BB 1 - 6
Exhibit B FLORIDA TRENCH SAFETY ACT CERTIFICATION AND DISCLOSURE STATEMENT FORM	1 - 2
Exhibit C CONFLICT OF INTEREST DISCLOSURE FORM	COI - 1
Exhibit D DRUG-FREE WORKPLACE CERTIFICATION FORM	DFWC 1 - 2

Exhibit E	CERTIFICATION OF UNDERSTANDING (NPDES AND PPCP)	CU 1 - 2
Exhibit F	CONTRACTOR RESPONSIBILITY SURVEY FOR ENGINEERING AND CONSTRUCTION SERVICES.....	CRS 1 - 2

PART IV - AGREEMENT

Agreement	A-1 - A-6
-----------------	-----------

PART I

BIDDING REQUIREMENTS

- INSTRUCTIONS TO BIDDERS -

PROJECT NAME: PAVING ASSESSMENT PROJECTS 4

(Foxwood, Foggy Ridge Parkway, Leonard Road, Ardsley Lane, Lakewood Estates, Valley View Estates, Veterans Village Part 4, Sea Forest, Cranbrook Place and Virginia City)

PRE-BID CONFERENCE: NO PRE-BID CONFERENCE

BID OPENING DAY/DATE/TIME: JULY 31, 2007 @ 2:00 P.M. (Local Time, Our Clock)

PLACE OF BID OPENING: Pasco County Purchasing Department, 8919 Government Drive, New Port Richey, Florida, 34654-5598.

1. BIDS

- 1.1 Bid Package.** The Instructions to Bidders (Part I), the General Conditions of the Contract (Part II), the Bid Proposal (Part III), and the Agreement (Part IV), together with all other documents identified in Article I of the General Conditions of the Contract (Part II), constitute the entire Bid Package, and upon award, shall constitute the Contract Documents concerning the above-referenced Project. Said Bid Package must be the basis upon which all Bid Proposals are offered. One (1) fully completed and executed original Bid Proposal must be submitted in a sealed envelope to the Pasco County Purchasing Department, along with any other documentation required by this Bid Package, at the time and place herein specified. Errors in any Bid Proposal submitted may result in the rejection or disqualification of the Bid Proposal. No BIDDER is required to return the Instructions to Bidders, Conditions of the Contract, or Agreement with their bids, unless specified elsewhere in this Bid Package. The BIDDER must manually sign the Bid Proposal (Part III).

- 1.2 Prices (Bid Proposals).** Prices must be quoted only upon the Bid Proposal form attached hereto and identified as Bid Proposal (Part III), and no other Bid Proposals will be accepted. Sealed Bid Proposals may not be amended or otherwise changed by any writing placed outside the sealed bid package; except, however, any such written external communication by a BIDDER may be construed by the COUNTY as indicating a *withdrawal* of the proffered, sealed bid to which the communication relates (thereby causing the BIDDER to have issued *no bid* for consideration by the County). All prices quoted are to be F.O.B. for the designated Project site in Pasco County, Florida.
- 1.3 Delivery of Bids.** The BIDDER is hereby directed to cause delivery of its Bid Proposal for this Project to the Pasco County Purchasing Department, 8919 Government Drive, New Port Richey, Florida, 34654-5598, prior to the bid opening time, which is specified above. The delivery of said Bid Proposal to the Purchasing Department, prior to the time and date stated in the preceding sentence, is solely and strictly the responsibility of the BIDDER. The COUNTY will in no way be responsible for delays caused by the United States Postal Service or for delays caused by any other occurrence. All Bid Proposals must be manually and duly signed by an authorized corporate director or officer, authorized agent, or authorized partner (as applicable). All Bid Proposals must be marked, on the outside sealed envelope, with the PROJECT NAME, BID OPENING LOCATION, AND BID OPENING DATE AND TIME SPECIFIED ABOVE.
- 1.4 Execution of Bids.** When a BIDDER is a partnership, the Bid Proposal shall be signed in the name of the firm and by all partners required to do so under the terms of their partnership agreement. When a corporation or limited liability company is a BIDDER, the authorized director or officer signing the Bid Proposal shall set out the legal name of the entity in full, beneath which said director or officer shall sign his or her name and give the title of his or her office, and the Bid Proposal shall bear the seal of the corporation. Anyone signing the Bid Proposal as an agent for the BIDDER must file with it legal evidence of the authority to do so. A BIDDER that is a corporation, a limited liability company or a limited partnership shall furnish to COUNTY staff a duly certified copy of its permit, certificate of registration with the Florida Secretary of State, or other authorization, if any, to transact business in the State of Florida, preferably along with the Bid Proposal, and no later than forty-eight (48) hours after any request for the same is made by the COUNTY. In addition, any such authorization must be effective as of the date of the Bid Proposal. Failure to submit evidence that the BIDDER qualifies to transact business in the State of Florida as stated above may be the basis for rejection of the Bid Proposal.
- 1.5 Other responsibilities of the BIDDER.** The BIDDER is solely responsible for reading and completely understanding the requirements of the Contract

Documents. The bid opening time shall be scrupulously observed. Under no circumstances will Bid Proposals delivered after the delivery time specified be considered. Late Bid Proposals will not be accepted.

- 1.6 Withdrawal or Modification of Bids.** Bid Proposals may be withdrawn on written or telegraphic requests dispatched by the BIDDER in time for delivery in the normal course of business prior to the time fixed for the opening of Bid Proposals; provided, however, that written confirmation of any telegraphic withdrawal over the signature of the BIDDER is deposited with the United States Postal Service, postage pre-paid for first-class or express mail delivery, and postmarked prior to the time set for the opening of Bid Proposals. Except as specifically provided herein, no BIDDER may modify a bid after the appointed bid opening time. **Negligence on the part of the BIDDER in preparing its Bid Proposal confers no right of withdrawal or modification of its Bid Proposal after COUNTY staff has opened such Bid Proposal at the appointed time and place. BIDDERS may not withdraw or modify their Bid Proposals after the appointed Bid Proposal opening time.** Said Bid Proposals and any bid security shall be in force for a period of not less than ninety (90) days after the bid opening time. Further, said bid security and Bid Proposal shall continue in force after said period of ninety (90) days, until thirty (30) days following the date of receipt by the COUNTY of written notice from the BIDDER of its intent to withdraw its Bid Proposal, or until the date specified in said written notice as the expiration date of the Bid Proposal, whichever is later. The aforementioned bid security or Bid Proposal times will remain in effect irrespective of whether an award has theretofore been made by the COUNTY. Notwithstanding the provisions of the preceding sentence, the BIDDER may extend its Bid Proposal at any time prior to the scheduled expiration thereof. BIDDER may not assign or otherwise transfer their Bid Proposals prior to, or after, the Bid Proposal opening time.
- 1.7 Opening of Bids.** At the time and place fixed for the opening of Bid Proposals (see above), every Bid Proposal properly delivered within the time fixed for receiving Bid Proposals will be opened and publicly read aloud, irrespective of any irregularities found therein. Any BIDDER and other persons interested may be present or represented.
- 1.8 Power of Attorney.** Attorneys-in-fact who sign bonds or other surety instruments must attach with each bond or surety instrument an effective and certified power of attorney.
- 1.9 Interpretation of Contract Documents.** No interpretation of the meaning of the Drawings, Specifications, or other Contract Documents will be made to, or if made may be relied upon by, any BIDDER except as expressly noted below. **Every request for such interpretation must be in writing, addressed to the Purchasing Director. To be given consideration, such requests must be received at least ten (10) days prior to the bid opening date.** Any and all such interpretations and any supplemental instructions will be in the form of a written addendum which, if issued,

will be posted at the Pasco County Purchasing Department, and sent to each prospective BIDDER, at the respective addresses furnished for such purposes not later than five (5) days prior to the bid opening date. If requested, a copy may be obtained by the prospective BIDDER or its representative at the Pasco County Purchasing Department, 8919 Government Drive, New Port Richey, Florida, 34654-5598. Failure of any BIDDER to acknowledge any such addendum or interpretation shall not relieve said BIDDER from any obligation imposed in such addendum. All addenda so issued shall become part of the Contract Documents when the COUNTY has provided addenda within the time frame stated above.

- 1.10 Site Examination.** Before submitting a Bid Proposal, every BIDDER must carefully examine the site of the proposed Work and make all necessary investigations to inform themselves thoroughly as to all difficulties involved in the completion of all Work required pursuant to the mandates and requirements of this bid package. No pleas of ignorance of conditions or difficulties that may exist prior to the bid opening time, or of conditions or difficulties that may be encountered in the execution of the Work pursuant to this bid package as a result of a failure to make necessary and reasonable examinations and investigations, will be accepted as an excuse for any failure or omission on the part of the successful BIDDER (i.e., the CONTRACTOR) to fulfill, in every detail, all of the requirements of the Contract Documents, nor will they be accepted as a basis for any claims whatsoever for extra compensation, or for any extension of time.

2. CONTRACTOR LICENSING, REGISTRATION, AND CERTIFICATION

- 2.1** Each BIDDER shall be properly licensed, registered, and/or certified, as necessary or otherwise appropriate, by the State of Florida, Pasco County, and/or any municipality in Pasco County, for each category of work specified in this bid.
- 2.2** For categories of work that are exempt from licensing, registration, and/or certification requirements under Florida Statute, but where certification by the Florida Department of Transportation is available, the BIDDER shall be certified by the Florida Department of Transportation in each category, as necessary or otherwise appropriate.
- 2.3** All required licenses, registrations, and/or certifications must be current and effective as of the Bid Opening date and must be maintained throughout the life of the contract. Failure to be properly licensed, registered, and/or certified as of the Bid Opening date will result in rejection of the bid as non-responsive, and at any other time during the life of the contract shall constitute sufficient grounds for a declaration by the COUNTY that the CONTRACTOR is in default and for termination of the contract for cause by the COUNTY.

3. TAXES

The attention of the BIDDER is directed to the fact that the tax laws of the State of Florida, including but not limited to Chapter 212, Florida Statutes, apply to this bid matter, and that all applicable taxes and fees shall be deemed to have been included in proposal of the BIDDER.

4. BID ERRORS

The BIDDER should initial erasures or corrections in any Bid Proposal in ink. The COUNTY shall reject any Bid Proposal with such erasures or corrections where County staff concludes it cannot determine with certainty the accuracy or intent of said Bid Proposal, as corrected. In the case of unit price contracts, if an error is committed in the extension of an item, the unit price as shown in the Bid Proposal will govern. Unit prices will be utilized to adjust the total compensation due the successful BIDDER based on actual quantities encountered. *No negotiation of these unit prices after contract award will be allowed.* Significant changes in quantities, including total deletions, are possible. Therefore, each BIDDER shall proportionately distribute overhead and profit across the unit prices.

5. DEVIATIONS

No material deviations or exceptions shall be accepted with the Bid Proposal. This shall not preclude the proposal of substitute brand names, pursuant to paragraph 8.1 below.

6. NO BID

Any firm, corporation, business or individual that received a bid package, but is not submitting a bid as concerns this bid matter should, nevertheless, respond relative to the time and place for the receipt of bids (as above described), clearly marking the Bid Proposal (Part III) "NO BID". Said non-bidders should return and indicate upon the Bid Proposal (Part III) the reason for the non-bid. Alternately, a formal letter stating the reason for not bidding will be acceptable. Failure by any non-BIDDER to comply with this requirement may result in the removal of the name of that non-bidder from the bidders' mailing list maintained by the COUNTY.

7. CONDITION OF MATERIALS AND PACKAGING

In instances where the Specifications make this subject applicable (and unless otherwise indicated), all goods and items offered for sale and/or shipped by the successful BIDDER pursuant to the requirements imposed upon said BIDDER by this bid package, will be new and of good quality; all related containers being new and suitable for storage and shipment; and all prices shall include the cost of standard commercial packaging. The successful BIDDER shall be solely responsible for making any and all claims against carriers as concerns missing or damaged items.

8. BRAND NAMES, REQUESTED INFORMATION, AND DESCRIPTIVE LITERATURE

8.1 In instances where the Contract Documents make this subject applicable, any use therein of brand names, manufacturer's makes, trade names, information and/or catalog numbers are so used for the purpose of providing description and for establishing acceptable quality levels. Such references are not intended for the purpose of placing restrictions upon a BIDDER (other than as to quality), and any BIDDER may propose and describe brands believed to be equal or better than the otherwise-specified brand. The burden of proof that the brand proposed by the BIDDER is in fact equal to that referenced in the Contract Documents lies exclusively with the BIDDER. In the event that either COUNTY staff or the Professional determines that the equal proposed by the BIDDER does not meet the specifications, the successful BIDDER shall be required to provide the named brand item, or an equal acceptable to the County, at no additional cost to the County.

8.2 Each BIDDER must furnish all requested information in the spaces provided on the Bid Proposal (Part III). Additionally, where required pursuant to the provisions of this bid package, each BIDDER must submit the following with their Bid Proposal: catalog cuts, sketches, descriptive literature, and/or complete specifications relative to the items proposed and offered. References to previously submitted material concerned with previous Bid Proposals are not acceptable to the COUNTY.

9. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT

All material, equipment, etc., as proposed and offered by a BIDDER, in instances where applicable due to the nature of the bid matter with which this bid package is concerned, must meet and conform to all O.S.H.A. requirements as set forth in Subpart E of the O.S.H.A. Standards for Construction (29 CFR 1926), as amended. The signature of the BIDDER or of the authorized representative thereof upon the Bid Proposal (Part III) shall constitute certification of such fact.

10. TIME IS OF THE ESSENCE; LIQUIDATED DAMAGES

Each BIDDER is reminded that *time is of the essence of this Agreement*, and failure to complete the Work on time shall constitute a material breach of the Agreement, the basis for a determination of the default of the CONTRACTOR, and termination of the Agreement for cause. If the Contract Documents so indicate, an amount determined for liquidated damages at the rate specified shall be assessed against the successful BIDDER not complying with a stated delivery time or performance time (or similarly stated information) as found in the Agreement (Part IV).

11. ASSIGNMENT OF THE CONTRACT

No successful BIDDER may make any assignment of any resulting Agreement between the parties, in whole or in part, without the prior written authorization of the Pasco County

Board of County Commissioners, which authorization shall remain the exclusive option of the BOARD.

12. AWARD OF CONTRACT; REJECTION OF BIDS

The apparent low BIDDER will be so notified by COUNTY staff, and shall be required, upon receiving such notice, to complete the Contractor Responsibility Survey form identified as Exhibit F to Part III of the contract documents and provide all information and documentation requested therein. If, after reviewing the responsibility survey and accompanying submissions, the COUNTY elects to reject the apparent low bidder based on its responsibility evaluation, the COUNTY may perform the same responsibility evaluation, in succession, with each apparent next lowest bidder until the contract is awarded to a suitable candidate or withdrawn. The Pasco County Board of County Commissioners shall award a contract to the lowest responsive and responsible BIDDER, *provided* that the Bid Proposal of said BIDDER is considered, in the sole discretion of the BOARD, to be reasonable and in the best interests of the COUNTY to accept. No award of the contract shall be made until the BIDDER who has received from the COUNTY a Notice To Apparent Low Bidder and a Notice of Intent to Recommend Award has submitted to the COUNTY a performance bond, payment bond, and any and all other and further documentation as may be required by the COUNTY as a condition precedent to such an award. A bid proposal may be rejected upon the failure of an apparent low BIDDER to provide to the COUNTY in a timely fashion any such required documentation.

The COUNTY, in its sole discretion, reserves the right to reject any and all Bid Proposals and to waive any informality concerning Bid Proposals whenever such rejection or waiver is deemed by the COUNTY to be in the best interests of the COUNTY. Likewise, the COUNTY reserves the right to reject the Bid Proposal of any BIDDER that has previously failed to perform properly, or to complete on time, contracts of a similar nature; that is not, or does not appear to the satisfaction of the COUNTY, in a position to perform the contract; or that has habitually, and without just cause, neglected the payment of bills or otherwise disregarded its obligations to subcontractors, materialmen, or employees. The ability of a BIDDER to obtain a performance bond or a payment bond shall not be regarded as the sole test of the competency or responsibility of any BIDDER. In those situations where the lowest responsible and response bid exceeds the COUNTY's budget amount, the COUNTY reserves the right to purchase by negotiation as provided in Section 2-123(C) of the Pasco County Code of Ordinances.

13. EXECUTION OF WRITTEN CONTRACT

The BIDDER receiving from the COUNTY a Notice of Intent to Recommend Award will be required to sign and submit to the COUNTY, within ten (10) days after the issuance of said notice, a written agreement that has been made a part of this bid package and identified as the Agreement (Part IV). Said written agreement will evidence in written form the contract to be made by the COUNTY following award by the BOARD to the successful BIDDER. For projects involving funds from EPA, the ten-day period will not begin to run until after the COUNTY has received approval of the award by DEP and/or EPA, as applicable. The contract shall be contingent upon the timely provision by the

BIDDER to the COUNTY of all documentation required by these contract documents, and may be unilaterally terminated by the COUNTY for cause upon the failure of the BIDDER to supply said bonds and other documentation within the time frames set forth in the contract documents.

14. BID BONDS AND OTHER BID SECURITIES

A bid bond or other security is required with this bid. Either cash, a certified check, a cashier's check, an irrevocable letter of credit or in the alternative, a Bid Bond completed and signed by all required parties shall be required to accompany each Bid Proposal in a stated dollar amount which equals not less than five percent (5%) of the sum of the computed total amount of the Bid Proposal of the BIDDER. The preferred Bid Bond format is provided at Exhibit B to the Bid Proposal (Part III). Any submitted certified check, cashier's check, or irrevocable letter of credit shall be drawn on a solvent bank or trust company authorized to do business in Florida, payable to the order of the Pasco County Board of County Commissioners, and shall have all necessary documentary revenue stamps attached, if required by law. Sureties on Bid Bonds shall be companies authorized to do business in the State of Florida; all such bonds shall be issued or countersigned by a local producing agent who is a resident of the State of Florida and satisfactory evidence of the authority of the person or persons executing such bonds shall be submitted with the bond. Personal and corporate checks are not acceptable to the COUNTY. Any deviation from these requirements may result in rejection of a bid as non-responsive.

15. PERFORMANCE BOND AND PAYMENT BOND

[CHECK ONE]

☒ [X] A Performance Bond and Payment Bond will be required regardless of the award amount of this Agreement.

☐ [] A Performance Bond and Payment Bond will be required on this Agreement only if the amount of award is Two Hundred Thousand Dollars and No Cents (\$200,000.00) or greater.

The Performance Bond shall be issued in a sum equal to one hundred percent (100%) of the total awarded contract amount by a surety company considered satisfactory by the COUNTY and authorized to transact business in the State of Florida, and shall be provided by the successful BIDDER for purposes of insuring the faithful performance of the obligations imposed by the resulting contract. The Payment Bond shall be issued in a sum equal to one hundred percent (100%) of the total awarded contract amount by a surety company considered satisfactory by the COUNTY and authorized to transact business in the State of Florida, and shall be provided by the successful BIDDER for purposes of protecting the County from lawsuits for non-payment of debts as might be incurred during the performance by the successful BIDDER under such contract. The Performance Bond and Payment Bond forms have been included in the Contract

Documents as Exhibits A and B in Part II, and said forms must be properly executed by the surety company and the successful BIDDER and submitted to COUNTY staff within ten (10) days after issuance of Notice of Intent to Recommend Award by the COUNTY PURCHASING DIRECTOR. In lieu of the bonds required by this section, the successful BIDDER may file with the COUNTY an alternative form of security that shall be in the form of cash, money order, certified check, cashier's check, irrevocable letter of credit, or a security of the type listed in Part II of Chapter 625, Florida Statutes. Such alternative forms of security shall be for the same purpose and shall be subject to the same conditions as those applicable to the bonds required by this section. The determination of the value and acceptability of such alternative forms of security shall be made exclusively by the COUNTY.

16. SECURITY FORFEITURE

If within ten (10) days after the issuance of the Notice of Intent to Recommend Award, the successful BIDDER refuses, or otherwise neglects, to execute and deliver the required Agreement, or fails to furnish the required Performance and Payment Bonds, or acceptable alternative forms of security as stipulated herein, or any required insurance certification, the amount of the bid security provided by said BIDDER, whether cash, check, Bid Bond, or some other acceptable form, or any combination of these, may be forfeited, and the BIDDER shall be excluded from further consideration for award of the bid. No plea of mistake in the bid or misunderstanding of the conditions of forfeiture shall be available to the BIDDER for the recovery of its bid security, or as a defense to any action based upon the neglect or refusal to execute the required Agreement, and/or to furnish the required bonds and /or applicable insurance certification.

17. LAWS AND REGULATIONS

All applicable Federal, State, and local laws, ordinances, rules and regulations shall apply to this Agreement throughout, and they will be deemed to be included in the Agreement as though herein written. Florida law will govern all questions concerning implementation and execution of this contract and shall also be controlling in any cause of action brought pursuant to this contract.

18. CONTRACTUAL OBLIGATIONS

The successful BIDDER may not sublet or subcontract any of the contractual obligations concerning this bid matter except as provided for in the written contract between the COUNTY and the CONTRACTOR. This statement does not prohibit subcontracting of the Work, but does prohibit subcontracting overall management obligations pertaining to the Work, or any substantial component thereof, and not more than eighty percent (80%) of the Work, as measured against the Bid Price, shall be subcontracted under any circumstances. This limitation on subcontracting shall not apply to any aspect of the Work that involves the supply of equipment or materials alone. The CONTRACTOR shall retain ultimate liability for all contractual obligations.

19. AVAILABILITY OF PERSONNEL AND EQUIPMENT

The successful BIDDER must have sufficient personnel and equipment to perform as required by the Contract Documents. A pre-award survey shall be conducted by the COUNTY to ascertain the availability of sufficient personnel and equipment. Should the COUNTY have reasonable doubt as to ability of the BIDDER to provide sufficient personnel and equipment to perform the work, the County may request specific assurance of ability of the BIDDER to perform. Any failure of the BIDDER to provide such assurance within the time specified by the COUNTY shall serve as an adequate basis for rejection of the bid.

20. PRE-CONSTRUCTION CONFERENCE

Prior to the start of construction, a joint meeting shall be held with representatives of the CONTRACTOR, the COUNTY, and other invited parties or government agencies which may be affected by, or have jurisdiction over, the Project or some aspect thereof. This meeting is intended to introduce the various key personnel from each organization and to discuss the start of construction, order of work, labor and legal requirements, insurance requirements, names of the major subcontractors, method of payment, shop drawing requirements, protection of existing facilities, and other pertinent items associated with the Project.

21. PLANS AND SPECIFICATIONS

After the award and execution of the contract, an executed copy of the Contract Documents, including one blueline of the complete set of Drawings (if applicable), shall be furnished to the successful BIDDER.

22. PUBLIC ENTITY CRIMES STATEMENT

22.1 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 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 in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

22.2 Additionally, a conviction of a public entity crime may form the basis for the rejection of a bid, offer, or proposal by the COUNTY, or for termination of a contract with the COUNTY. The COUNTY may make inquiries regarding alleged convictions of public entity crimes at any time. The unreasonable failure of a bidder, offerer, or proposer to promptly supply information in connection with any such inquiry shall be adequate grounds for rejection of a bid, offer, or proposal, or for termination of a contract.

23. OVERHEAD COSTS

All BIDDERS shall include in their bids the cost of home office overhead and field office overhead for the original Contract Time. Additional compensation for field office overhead may be considered only if the Contract Time is extended by a change order or allowance authorization release. Home office overhead for additional work where the contract time is extended shall be in accordance with Article 12 of the General Conditions. Additional work completed within the original Contract Time will not be eligible for additional compensation for field office overhead. Field office overhead includes on-site supervision. This amount shall not exceed the amounts stated in Article 12.3 of the General Conditions.

24. DRUG FREE WORKPLACE PROGRAM

Pursuant to Section 287.087, Florida Statutes, BIDDERS may submit with their bid proposal a certificate certifying that they have implemented a drug free workplace program. If two or more bid proposals are equal in price, quality, and service, preference will be given in the award process to the BIDDER who has furnished such certification with their bid proposal.

25. PRE-BID CONFERENCE

All prospective BIDDERS are required to attend any mandatory pre-bid conference that may be specified on page IB-1 of these Instructions to Bidders, and are strongly encouraged to attend any non-mandatory pre-bid conference that may be offered. The purpose of the pre-bid conference is to allow potential BIDDERS an opportunity to present questions to staff and obtain clarification of the requirements contained in the bid documents. Because the COUNTY considers any mandatory pre-bid conference critical to understanding the bid requirements, interested firms must arrive within the first thirty (30) minutes of the scheduled commencement time for the pre-bid conference to qualify as a BIDDER.

PART II

CONDITIONS OF THE CONTRACT

A. GENERAL CONDITIONS

ARTICLE 1 – CONTRACT DOCUMENTS

Except for Titles, Subtitles, Headings, Running Headings, Table of Contents, and Indices (all of which are printed herein merely for convenience), the following, except for such portions that may be specifically excluded, constitute the Contract Documents:

1.1 BIDDING REQUIREMENTS – INSTRUCTIONS TO BIDDERS

1.2 CONDITIONS OF CONTRACT

A. GENERAL CONDITIONS

EXHIBITS TO SUBPART A:

Exhibit A: PERFORMANCE BOND FORM

Exhibit B: PAYMENT BOND FORM

Exhibit C: CERTIFICATE OF INSURANCE

Exhibit D: ENDORSEMENT

Exhibit E: APPLICATION FOR PAYMENT – FORM

Attachment 1 – Disputes viz. prior application
Attachment 1 – Disputes viz. current application
Schedule of Values

Exhibit F: CONTRACTOR'S AFFIDAVIT OF PAYMENT OF DEBT AND CLAIMS

Exhibit G: SUBCONTRACTOR STATEMENT OF SATISFACTION

Exhibit H: CHANGE ORDER FORM

Exhibit I: CONSENT OF SURETY TO CHANGE ORDER

Exhibit J: ALLOWANCE AUTHORIZATION RELEASE (AAR) FORM

Exhibit K: CONSENT OF SURETY TO FINAL PAYMENT

B. SPECIAL CONDITIONS

C. TECHNICAL SPECIFICATIONS

- 1.3 BID PROPOSAL** (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice to Apparent Low Bidder)

Exhibit A: Bid Bond Form

Exhibit B: FLORIDA TRENCH SAFETY ACT CERTIFICATION AND DISCLOSURE STATEMENT FORM

Exhibit C: CONFLICT OF INTEREST DISCLOSURE FORM

Exhibit D: DRUG-FREE WORKPLACE CERTIFICATION FORM

Exhibit E: CERTIFICATION OF UNDERSTANDING (NPDES AND PPCP)

Exhibit F: CONTRACTOR RESPONSIBILITY SURVEY FOR ENGINEERING AND CONSTRUCTION SERVICES

1.4 AGREEMENT

1.5 The Executed Bid, Payment and Performance Bonds.

1.6 All Addenda Issued by the County.

1.7 The original Specifications and Drawings.

1.8 All Supplemental Drawings Issued After Award of the Agreement.

1.9 All Field Orders, AARs, and/or Change Orders issued after Award of the Agreement.

ARTICLE 2 – DEFINITIONS

2.1 The following words and expressions shall, wherever they appear in the Contract Documents be construed as follows.

2.1.1 Addenda. Written or graphic instruments issued prior to the opening of Bids that clarify, correct, or change the Contract Documents.

2.1.2 Agreement. The principal written agreement between the COUNTY and the CONTRACTOR that, along with other Contract Documents, sets forth the respective rights and

\\BCCATTY01\County_Data\cau12-JMF\Public\Paving Assessment 4\Bid Doc\04.Part II.A. General Conditions.doc

obligations of the parties. The Agreement will be attached to and made a part of these Contract Documents as Part IV thereof.

2.1.3 Allowance Authorization Release (AAR). The written pre-approval of the COUNTY ADMINISTRATOR or his designee for Allowance Work.

2.1.4 Allowance Work. That additional or revised work described in Article 21 of this Part II of the Contract Documents.

2.1.5 Application for Payment. The formal written request of a CONTRACTOR for a progress or final payment, which is to include such supporting documentation as may be required by the Contract Documents and which is to be submitted on the most recent COUNTY-approved form.

2.1.6 Beneficial Occupancy. The status of completion of a specified portion of the Project which (in the opinion of the DIRECTOR, upon recommendation by the PROJECT MANAGER, as evidenced by a Certificate of Beneficial Occupancy) is sufficiently complete, in accordance with the Contract Documents, so that the COUNTY may utilize that portion for the purposes for which it was intended, when said use will not significantly interfere with the construction of the remaining (uncompleted) part of the Project.

2.1.7 Bid Proposal. The offer or proposal of the BIDDER submitted on the prescribed form setting forth the price(s) for the Work to be performed.

2.1.8 Bidder. Any natural person, partnership, corporation, limited liability company, or any other legal entity submitting a Bid Proposal for the Work.

2.1.9 BOARD. Shall mean the Board of County Commissioners of Pasco County, Florida.

2.1.10 Bonds. Bid, Performance, Payment, Warranty Bonds, and other instruments of security furnished by the CONTRACTOR and the SURETY for the CONTRACTOR in accordance with the Contract Documents.

2.1.11 Change Order (CHOR). A written order signed by the Chairman of the Pasco County Board of County Commissioners authorizing an addition, deletion or revision in the Work or an adjustment in the Contract Price or the Contract Time issued after execution of the Agreement.

2.1.12 Contract Documents. The Agreement between the parties and all other documents delineated in Article I of this Part II of the Contract Documents.

2.1.13 CONTRACTOR. The successful BIDDER, whether a natural person, partnership, corporation, limited company, or any other legal entity or combination thereof, with whom the BOARD has entered into the Agreement.

2.1.14 Contract Price. The total monies payable by the COUNTY to the CONTRACTOR under the Contract Documents.

2.1.15 Contract Time. The number of calendar days stated in the Agreement for Completion of the Work and for performance of any Allowance Work hereunder, as amended by one or more approved Change Orders. The first day of the Contract Time shall be the date the Chairman of the BOARD executes the Agreement (Part IV) on behalf of the COUNTY.

2.1.16 Cost of Work. With respect to Change Orders, the costs necessarily incurred and paid by the CONTRACTOR in the proper performance of the change order work, as delimited and restricted by Article 15 of this Part II of the Contract Documents.

2.1.17 COUNTY. The BOARD and the BOARD acting by and through its authorized designees, agents and employees.

2.1.18 COUNTY ADMINISTRATOR. The County Administrator of Pasco County, Florida, acting directly or through duly authorized representatives, which representatives are acting exclusively within the scope of the duties and authority assigned to them.

2.1.19 COUNTY ENGINEER. The Director of Engineering Services of Pasco County, Florida, acting directly or through duly authorized representatives, which representatives are acting exclusively within the scope of the duties and authority assigned to them.

2.1.20 COUNTY PURCHASING DIRECTOR. The Purchasing Director of Pasco County, Florida, acting directly or through duly authorized representatives, which representatives are acting exclusively within the scope of the duties and authority assigned to them.

2.1.21 Day. One calendar day when used in the Contract Documents, measured from midnight to the next midnight, unless specified as a business day, in which case the term shall exclude Saturdays, Sundays, and holidays for which COUNTY offices is closed for business during any given calendar year.

2.1.22 Defective. An adjective which, when modifying the Work, refers to Work that is unsatisfactory, faulty, deficient or otherwise does not conform to the Contract Documents.

2.1.23 DEPARTMENT. Except as otherwise modified, a term that refers to the Branch, Division, Department or Office within the COUNTY that is administering the Project.

2.1.24 DIRECTOR. Except as otherwise modified, a term that refers to the Administrator or Director of the Branch, Division, Department or Office initiating and managing the Project or the authorized designee thereof.

2.1.25 Draft Payment Request. The draft of an Application for Payment, utilizing the most current COUNTY-approved Application for Payment form and designated by the word "DRAFT" in the top-right corner of each page thereof, submitted by a CONTRACTOR to the PROJECT MANAGER in advance of, and as a condition precedent to, the submission by the

CONTRACTOR of the Application for Payment, for the purpose of identifying and resolving possible errors which could cause any or all amounts of the Application for Payment to be rejected as disputed pursuant to the Florida Prompt Payment Act, Florida Statutes Section 218.735.

2.1.26 Drawings. The drawings that show the character and scope of the Work to be performed and which have been prepared or approved by the PROFESSIONAL.

2.1.27 Equal/Equivalent. A product, service, component or system that is demonstrated to the satisfaction of the DIRECTOR, upon the recommendation of the PROJECT MANAGER, to be equal to the product service, component or system specified. The DIRECTOR shall be the sole judge of acceptability of a proposed Equal/Equivalent.

2.2.28 Field Order (FO). A written direction to the CONTRACTOR from the PROFESSIONAL that modifies Drawings and Specifications without changing Contract Price or Contract Time.

2.1.29 Final Acceptance. The acceptance of the Work by COUNTY as evidenced by the signature of the PROJECT MANAGER and the DIRECTOR upon the Certificate of Final Completion form. Final Acceptance shall be deemed to have taken place only if and when such signature is affixed to such certificate. The Certificate of Final Completion shall be signed only after the PROJECT MANAGER and the DIRECTOR have assurance by tests, inspection, or otherwise that all of the provisions of the Contract Documents have been carried out. Final Acceptance may also require inspection by certain regulatory agencies.

2.1.30 Final Total Bid Price. The ultimate bid price to be used by the COUNTY in its determination of the lowest and best Bid Proposal, which shall be calculated by the COUNTY based on the Total Bid Price submitted by a BIDDER and which may include the addition or deletion of Alternates included in the Alternate Bid Schedule submitted by the BIDDER in the Bid Proposal, as well as any allowances established and approved by the COUNTY. Upon acceptance and award of the bid, the Final Total Bid Price shall form the basis for the initial Contract Price.

2.1.31 Final Completion. The status of completion of the Work such that, in the opinion of the DIRECTOR, upon the recommendation of the PROJECT MANAGER, as evidenced by a definitive and duly executed Certificate of Final Completion, all Work has been completed in accordance with the General Documents, and there remain no outstanding and unfinished Punch List items.

2.1.32 Non-conformance Report (NR). A written notice from the PROJECT MANAGER to the CONTRACTOR reporting on an aspect of defective work that requires the immediate correction of the same by the CONTRACTOR.

2.1.33 Notice. Any notice required or permitted by the Contract Documents. Said Notice shall be in written form. Notice shall be served upon the CONTRACTOR at the place of business given in the Contract Documents. Notice to the COUNTY shall be served at the office of the DIRECTOR.

2.1.34 Notice of Suspension. The written notice issued to the CONTRACTOR by the PROJECT MANAGER, upon the instructions of the DIRECTOR, to suspend the Work pursuant to paragraph 16.1 of Article 16 of this Part II of the Contract Documents.

2.1.35 Notice of Termination. The written notice issued to the CONTRACTOR by the PROJECT MANAGER, upon the instructions of the DIRECTOR, to terminate the Work for reasons other than the convenience of the COUNTY, pursuant to paragraph 16.2 of Article 16 of this Part II of the Contract Documents.

2.1.36 Notice of Termination of Convenience. The written notice issued to the CONTRACTOR by the PROJECT MANAGER, upon the instructions of the DIRECTOR, to terminate the Work for the convenience of the COUNTY pursuant to paragraph 16.2.3 of Article 16 of this Part II of the Contract Documents.

2.1.37 Notice to Apparent Low Bidder. The written notice issued by the COUNTY to the apparent low BIDDER, directing said BIDDER to complete the Contractor's Responsibility Survey (Part III – Exhibit F) and execute and submit the Agreement (Part IV) for possible submission to the BOARD.

2.1.38 Pay Quantity. When applicable, the estimated quantity multiplied by the unit price for each pay item specified in the Bid Proposal (Part III).

2.1.39 PROFESSIONAL. The professional architectural/engineering firm designated to perform the design and/or resident engineer services for the Work by a prior agreement entered into between the COUNTY and said firm, or the COUNTY ENGINEER on those occasions when, and to the extent that, COUNTY shall perform the design and/or resident engineer services for the Work of a portion thereof.

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

2.1.41 PROJECT MANAGER (PM). A natural person employed by the COUNTY and assigned to manage and administer the Project that is the subject of the Contract Documents. The PROJECT MANAGER may designate in writing a PROJECT REPRESENTATIVE to perform certain duties and responsibilities as maybe set forth in the Special Conditions.

2.1.42 PROJECT REPRESENTATIVE (PR). A natural person employed by the COUNTY and designated in writing by the PROJECT MANAGER, with the written concurrence of the DIRECTOR, to perform certain duties and responsibilities as set forth in the Special Conditions.

2.1.43 Punch List. A detailed list of work remaining after Substantial Completion prepared or approved by the PROJECT MANAGER with the consent of the DIRECTOR that the CONTRACTOR must complete to achieve Final Completion and a prerequisite to Final Acceptance.

2.1.44 Schedule. A plan for performing work or achieving an objective.

2.1.45 Schedule of Values. A statement furnished by the CONTRACTOR to the COUNTY reflecting the portions of the contract sum allotted for the various parts of the work and used as the basis for reviewing the applications of the CONTRACTOR for progress payments.

2.1.46 Site. The area(s) on which the operations of the CONTRACTOR are carried out and such other adjacent areas that may be designated as such by the Contract Documents.

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

2.1.48 SUBCONTRACTOR. Any natural person, partnership, corporation, limited liability company, or other legal entity or combination thereof, other than employees of the CONTRACTOR, who contracts with the CONTRACTOR to furnish labor, materials, and/or equipment for the Work.

2.1.49 Submittals. All drawings, diagrams, illustrations, schedules, samples, test results, and other data which are specifically prepared by a CONTRACTOR, SUBCONTRACTOR, manufacturer, fabricator, supplier, or distributor to illustrate some portion of the Work and all such illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

2.1.50 Substantial Completion. The status of completion of the Work which, in the opinion of the DIRECTOR, upon recommendation of the PROJECT MANAGER, as evidenced by a definitive Certificate of Substantial Completion, is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it was intended.

2.1.51 Substitution. A product, service, component or system that is not equal to that delineated in the Specifications, but which is proposed by the CONTRACTOR in lieu thereof. The acceptability of a Substitution shall be based on the data submitted and the benefit of the COUNTY, including, but not limited to, appropriate adjustments in price. The PROJECT MANAGER shall make a recommendation to the DIRECTOR with respect to any proposed substitutions, and the DIRECTOR shall be the sole judge of acceptability of any Substitution.

2.1.52 Supplemental Drawings. The drawings issued after the execution of the Agreement to explain further, to illustrate, or to show changes in the Work.

2.1.53 SURETY. Any business entity that executes, as Surety, the Bid Performance, Payment or Warranty Bonds submitted by or on behalf of a CONTRACTOR.

2.1.54 Total Bid Price. The total price for which a BIDDER proposes to complete the Work, as submitted by a BIDDER in a Bid Proposal to the COUNTY, based on the Bid Schedule included with the Bid Proposal, but exclusive of adjustments by the COUNTY for Alternates listed in the Alternative Bid Schedule included in the Bid Proposal, and exclusive of any Allowances by the COUNTY.

2.1.55 Work. The work to be performed under this Agreement shall consist of furnishing all plant, tools, equipment, materials, supplies, and manufactured articles and for furnishing all transportation and service, including fuel, power, water, and essential communications, and for the performance of all labor, work or other operations required for the fulfillment of the Agreement in strict accordance with the specifications, schedules, drawings and other Contract Documents as herein defined, all of which are made a part hereof, and including such detailed sketches as may be furnished by the PROFESSIONAL from time to time during construction in explanation of said Contract Documents. The Work shall be complete and all work, materials, and services not expressly shown or called for in the Contract Documents which may be necessary for the complete and proper construction of the Work in good faith shall be performed, furnished and installed by the CONTRACTOR as though originally so specified or shown, at no increase in cost to the COUNTY.

ARTICLE 3 –PRELIMINARY MATTERS

3.1 Delivery of Bonds and Other Documents. When the BIDDER delivers the executed Agreement to the COUNTY, Payment and Performance Bonds shall be delivered as may be required in accordance with these Contract Documents. A Warranty Bond on the completed Work, to ensure that the Warranty obligations of the CONTRACTOR will be fulfilled, shall be delivered to the COUNTY in accordance with these Contract Documents as a prerequisite to the issuance of a Certificate of Substantial Completion, unless such coverage has otherwise been provided under the express terms of a Performance Bond. ***UNLESS THE DIRECTOR OR PURCHASING DIRECTOR HAS GRANTED AN EXTENSION OF TIME TO THE CONTRACTOR, THE FAILURE OF THE CONTRACTOR TO SUBMIT BONDS OR ANY OTHER DOCUMENTATION REQUIRED BY THESE CONTRACT DOCUMENTS TO THE COUNTY IN A TIMELY MANNER SHALL CONSTITUTE GROUNDS FOR THE TERMINATION BY THE COUNTY OF THE AGREEMENT FOR CAUSE.***

3.2 Commencement of Contract Time. The Contract Time shall commence on the date specified in the County's written Notice to Proceed. Such Notice will be issued after execution of the Agreement (Part IV) by the Chairman of the BOARD on behalf of the COUNTY.

3.3 Commencement of the Project. The CONTRACTOR shall begin the Work on the date the Contract Time commences. No work shall be done prior to the date on which the Contract Time commences. ***Any Work performed by the CONTRACTOR prior to date on which Contract Time commences shall be at the sole risk of the CONTRACTOR.***

3.4 Before Commencement of Each Part of the Work

3.4.1 Before undertaking each part of the Work, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures and all

applicable field measurements. The CONTRACTOR shall promptly report in writing to the PROJECT MANAGER any conflict, error, or discrepancy that it may discover. However, the CONTRACTOR shall not be liable to the COUNTY for failure to report any conflict, error, or discrepancy in the Drawings or Specifications unless the CONTRACTOR had actual knowledge thereof, or if the CONTRACTOR, by the exercise of reasonable diligence, should have known thereof.

3.4.2 At the pre-construction conference the CONTRACTOR shall submit to the PROJECT MANAGER a proposed preliminary progress schedule covering the activities of Work. The schedule shall also include start and completion dates of the various stages of the entire Work and a preliminary schedule of submittals. The preliminary schedule will be superseded by final schedules as called for in the Contract Documents.

3.4.3 The CONTRACTOR or SUBCONTRACTORS shall perform no work, and no irrevocable commitments to vendors made, until the Contract Time commences.

3.5 Qualifications of Subcontractors, Vendors, and Suppliers

3.5.1 Within ten (10) days after receipt of Notice to Apparent Low Bidder, the CONTRACTOR shall submit to the PROJECT MANAGER a list of all SUBCONTRACTORS and all such other persons and organizations whom the CONTRACTOR intends to utilize in performing portion of the Work. The CONTRACTOR shall indicate the corresponding line item as shown on the Schedule of Values under which each SUBCONTRACTOR will be working.

3.5.2 The CONTRACTOR agrees, within fourteen (14) days of receipt of a written request from DIRECTOR, to promptly remove from the Project any personnel employed or retained by the CONTRACTOR, whom DIRECTOR may request in writing to be removed, with or without cause. Any substitution submitted by CONTRACTOR must be acceptable to the DIRECTOR and said substitution shall be at no additional cost to the COUNTY.

3.5.3 The CONTRACTOR agrees, within fourteen (14) days of receipt of a written request from DIRECTOR, to promptly remove and replace any SUBCONTRACTOR employed or retained by the CONTRACTOR, whom DIRECTOR shall request in writing to be removed, with cause. If DIRECTOR requires the removal of any SUBCONTRACTOR, the CONTRACTOR shall submit a substitute acceptable to DIRECTOR and said substitution shall be at no additional cost to the COUNTY.

3.5.4 The CONTRACTOR may remove or replace a SUBCONTRACTOR employed or retained by the CONTRACTOR only with the prior written approval of the DIRECTOR. Said approval shall not be issued absent submission by the CONTRACTOR to the DIRECTOR of evidence, acceptable to the DIRECTOR, that the SUBCONTRACTOR to be removed or replaced has been paid in full for all services and material rendered by the SUBCONTRACTOR in connection with the Project.

3.6 Pre-construction Conference. Within ten (10) days following the award of bid by the BOARD, a conference shall be held for review and acceptance of the preliminary schedules

(see 3.4.2 above), to establish procedures for handling submittals and process Applications for Payment, and to establish a working understanding among the parties as to the Work. These items are discussed in greater detail in the Special Conditions and/or Technical Specifications.

ARTICLE 4 – CONTRACT DOCUMENTS; INTENT, CONFLICTS, INTERPRETATION, AND REUSE

4.1 Precedence

4.1.1 The Contract Documents comprise the entire agreement between the COUNTY and CONTRACTOR concerning the Work and may be altered only by Change Order.

4.1.2 It is the intent of the Contract Documents to describe the total Work to be constructed. The Contract Documents are complementary. What is called for by one is as binding as if called for by all. If the CONTRACTOR finds a conflict, error, or discrepancy in the Contract Documents, the CONTRACTOR shall call it to the attention of the PROFESSIONAL in writing before proceeding with the Work. The PROFESSIONAL shall respond with a written clarification as provided in Article 10. Any delays associated with the clarification shall be considered for time extensions only and *no damages for delay will be allowed*, absent fraud, bad faith, or active interference on the part of the COUNTY accompanied by actual malicious intent to delay. In resolving such conflicts, errors, and discrepancies, the Contract Documents shall be given precedence in terms of the most stringent requirements as determined by the DIRECTOR. Enforcement of the most stringent requirements shall be at the option of the COUNTY. Figure dimensions on the Drawings shall govern over scale dimensions, and the detailed Drawings shall govern over general Drawings. Any work that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for Work, materials, or equipment described in words that, so applied, have a well-known technical or trade meaning shall be deemed to have such recognized meaning.

4.2 Reuse of Documents. Neither the CONTRACTOR nor any SUBCONTRACTOR, manufacturer, fabricator, supplier, or distributor shall have or acquire any title or ownership rights in any of the Drawings, Specifications, or other documents (or copies thereof) prepared by, or bearing the seal of, the PROFESSIONAL, and they shall not reuse any of them on extensions of the Project or in connection with any other project.

ARTICLE 5 – PROJECT CONDITONS

5.1 Availability of Lands

5.1.1 The COUNTY shall furnish, at the times indicated in the Contract Documents, the lands upon which the Work is to be done, rights-of-way for access thereto, and such other lands that are designated for use by the CONTRACTOR. The COUNTY shall obtain easements for permanent structures or permanent changes in existing facilities unless otherwise specified in the Contract Documents. If the CONTRACTOR believes that any delay in the furnishing of these lands or easements by the COUNTY constitutes a valid

reason for an extension of the Contract Time, the CONTRACTOR may make a claim for such time extension as provided for in Articles 11 and 13, *but in no event will the CONTRACTOR be entitled to any damages or additional compensation for such delay*, absent fraud, bad faith, or active interference on the part of the COUNTY accompanied by actual malicious intent to delay. The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.1.2 Upon request, the PROJECT MANAGER shall furnish to the CONTRACTOR copies of all available boundary surveys and subsurface tests.

5.2 Unknown or Concealed Conditions

5.2.1 If conditions are encountered, excluding existing utilities, at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions, of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the CONTRACTOR shall give the COUNTY notice thereof promptly before conditions are disturbed and in no event later than 48 hours after first observance of the conditions.

5.2.2 The PROJECT MANAGER and the PROFESSIONAL shall promptly investigate such conditions, and, if they differ materially and cause an increase or decrease in the cost of, or the time required for, performance of any part of the Work by the CONTRACTOR, the PROJECT MANAGER shall recommend to the DIRECTOR, for presentation to the BOARD, an equitable adjustment in the Contract Price or Contract Time, or both. If the PROFESSIONAL and the PROJECT MANAGER determine that the conditions at the Site are not materially different from those indicated in the Contract Documents or are not materially different from those ordinarily found and that no change in the terms of the Agreement is justified, the PROJECT MANAGER shall notify the CONTRACTOR of the determination in writing. The Work shall be performed after the PROJECT MANAGER provides direction.

5.2.3 The CONTRACTOR shall ascertain such conditions, described in 5.2.1 as may be readily determined by inspection and inquiry, such as the location, accessibility, and general character of the Site, prior to submitting a Bid Proposal.

5.2.4 The basis of determining payment for unknown or concealed conditions involving excavation and/or fill shall be by representative cross-sections taken before, and after, the performance of the Work by the CONTRACTOR.

5.3 Reference Points. The PROFESSIONAL shall establish on the Drawings such general reference points as in its judgment will enable the CONTRACTOR to proceed with the Work. The CONTRACTOR shall establish the coordinates and elevations of two permanent benchmarks on the site. The CONTRACTOR shall establish construction control including, but not limited to construction baseline, any additional temporary benchmarks, and elevations at 1000-foot intervals by utilizing a registered land surveyor in compliance with all of the requirements of Chapter 472, Florida Statutes (Land Surveying). The CONTRACTOR

shall be responsible for the layout of the Work, shall protect and preserve the established reference points and shall make no changes or relocations to them without the prior written approval of the PROFESSIONAL. The CONTRACTOR shall, within forty-eight (48) hours, give notice to the PROJECT MANAGER or Project Representative whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. The CONTRACTOR shall replace and accurately relocate all reference points so lost, destroyed, or moved by utilizing a registered land surveyor in compliance with all of the requirements of Chapter 472, Florida Statutes (Land Surveying).

5.4 Existing Utilities. Information shown on the Drawings as to the location of existing utilities has been prepared from the most reliable data available to the COUNTY. Prior to commencing work, the CONTRACTOR shall be responsible for verification of the location of all underground utilities to the extent that the utilities can be reasonably located. The CONTRACTOR shall, at a minimum, contact all utility companies for the purpose of having all utilities located by the utility companies. The CONTRACTOR shall clear and grub those areas identified by the affected utility as essential to its work. Furthermore, the CONTRACTOR shall be responsible for discovery of existing underground installations, in advance of excavating or trenching, by contacting all local utilities, and by prospecting to ascertain that the utilities shown or otherwise identified are in the area shown. When such exploratory excavations show the utility location as indicated on the drawings to be in error, the CONTRACTOR shall so notify the PROJECT MANAGER. The COUNTY shall not be liable for any damage or delay caused by any utility line that was or could have been identified by the CONTRACTOR using reasonable means. If the CONTRACTOR fails to fulfill its due diligence investigation or negligently conducts the due diligence investigation with respect to existing utilities prior to the commencement of Work, the CONTRACTOR will be deemed to have waived any claim the CONTRACTOR might otherwise have had to an adjustment of the Contract Price or Contract Time. If the CONTRACTOR fully performs a due diligence investigation with respect to existing utilities prior to the commencement of Work, and the CONTRACTOR is subsequently delayed by an unknown existing utility conflict, the CONTRACTOR may make a claim for an extension to the Contract Time in accordance with the requirements of the Contract Documents, but in no event will the CONTRACTOR be entitled to any damages or additional compensation from the COUNTY.

ARTICLE 6 – BONDS, INSURANCE AND INDEMNIFICATION

6.1 Performance and Payment Bonds. The CONTRACTOR shall execute a Performance Bond and a Payment Bond as shown in Part II, Exhibits A and B, or furnish acceptable alternative forms of security as stipulated in the Instruction To Bidders (Part I) as security for the faithful performance and payment by the CONTRACTOR of all obligations of the CONTRACTOR under the Contract Documents. The CONTRACTOR shall cause each such bond (or acceptable alternative) to be in an amount equal to 100% of the Contract Price, as said Contract Price may be adjusted from time to time by an appropriate Change Order. Additionally, each such bond shall be as shown on the attached forms and shall be executed by the CONTRACTOR, and by a SURETY, authorized to do business as a surety in Florida, who is otherwise acceptable to the COUNTY. Said executed Performance Bond and Payment Bond shall be provided to the COUNTY by the CONTRACTOR prior to submission of the Agreement (Part IV) to the BOARD for its approval and execution. Prior to commencing

work, it shall be the responsibility of the CONTRACTOR to record in the Public Records of the COUNTY the executed Performance Bond and Payment Bond.

6.2 Warranty Bond. The CONTRACTOR shall execute a Warranty Bond in a form acceptable to the COUNTY, or furnish acceptable alternative forms of security for the faithful performance by the CONTRACTOR of the obligation of the CONTRACTOR to warranty and guarantee the Work under the Contract Documents, unless coverage is already provided under the express terms of a Performance Bond. The CONTRACTOR shall cause said Warranty Bond (or acceptable alternative) to be in an amount sufficient to guarantee the Work pursuant to Article 14 of this Part II, as said Work may be adjusted from time to time by an appropriate Change Order. Each such bond shall be executed by the CONTRACTOR, and by a SURETY, authorized to do business as a surety in Florida, that is otherwise acceptable to the COUNTY, and delivered to the COUNTY immediately before, and as a condition of Substantial Completion.

6.3 Insurance of the Contractor

6.3.1 During the life of this Agreement, the CONTRACTOR shall provide, pay for, and maintain insurance of the types and in the amounts described herein. All such insurance shall be provided by responsible companies with A.M. Best ratings of A-, Class 8 or better, authorized to transact business in the State of Florida, and which are satisfactory to the COUNTY. Promptly after the issuance by the COUNTY of the Notice to Apparent Low Bidder of this Agreement, and prior to submission of the Agreement (Part IV) to the BOARD for its approval and execution, the CONTRACTOR shall provide to the COUNTY evidence of insurance coverage of the types, and in the amounts, required hereunder by submitting executed Certificates of Insurance, the preferred form of which is found at Exhibit III. Each Certificate shall set forth the original manual signature of the authorized representative of the insurance company/companies identified therein and shall have attached thereto proof that said representative is authorized to execute the same. In addition, the CONTRACTOR shall provide certified true and exact copies of all required policies and of endorsements to the COUNTY within sixty (60) days of the issuance by the COUNTY of the Notice To Apparent Low Bidder.

6.3.2 All policies of insurance mandated by this Agreement shall require that the insurer give the COUNTY thirty (30) days written notice of any cancellation, intent not to renew, or reduction in coverage; and ten (10) days written notice of any non-payment of premium. Such notice shall be delivered by First-Class U.S. Mail to: Director, Risk Management Division – Pasco County, West Pasco Government Center- Suite 330, 7530 Little Road, New Port Richey, Florida, 34654-5598. In the event of any reduction in the aggregate limit of any policy, the CONTRACTOR shall immediately restore such limit to the amount required herein.

6.3.3 All insurance coverage provided by the CONTRACTOR shall be primary to any insurance or self-insurance program of the COUNTY that is applicable to the Work provided for in this Agreement.

6.3.4 Receipt by the COUNTY of any Certificate of Insurance or copy of any policy evidencing the insurance coverage and limits required by the Contract Documents does not constitute approval or agreement by the COUNTY that the insurance requirements have been satisfied or that the insurance policies shown on the Certificates of Insurance are in compliance with the requirements of the Contract Documents.

6.3.5 No work for the COUNTY shall commence, nor occupancy by the CONTRACTOR of any of its property take place, until the required Bonds, Certificates of Insurance, and copies of the associated policies, if requested, are received by the COUNTY, even if the Contract Time has commenced.

6.3.6 The insurance coverage and limits required of the CONTRACTOR under the Contract Documents are designed to meet the minimum requirements of the COUNTY. They are not designed as a recommended insurance program for the CONTRACTOR. CONTRACTOR shall be responsible for the sufficiency of its own insurance program. Should the CONTRACTOR have any questions concerning its exposures to loss under the Contract Documents or the insurance coverage needed therefore, it should seek professional assistance.

6.3.7 If the insurance coverage initially provided by the CONTRACTOR is to expire prior to completion of the Work, renewal Certificates of Insurance shall be furnished to the COUNTY thirty (30) days prior to expiration of current coverage.

6.3.8 Should the CONTRACTOR fail to maintain any of the insurance coverage required by the Contract Documents, the COUNTY may, at its option, either terminate this Agreement for default, or procure and pay for such coverage, charging the CONTRACTOR for, and deducting the costs of, the same from payments due the CONTRACTOR. A decision by the COUNTY to procure and pay for such insurance coverage shall not operate as a waiver of any of its rights under the Contract Documents.

6.3.9 All liability insurance policies obtained by the CONTRACTOR to meet the requirements of the Contract Documents, other than the Worker's Compensation and Employer's Liability Policy, shall provide that the COUNTY, its employees and agents, and the PROFESSIONAL shall be "additional insureds" under the Policy and shall also incorporate a Severability of Interest provision. All insurance coverage provided under this Section shall apply to all the activities of the CONTRACTOR under the Contract Documents without regard for the location of such activity.

6.3.10 Coverage. Amounts and type of insurance shall conform to the following minimum requirements with the use of current Insurance Service Office forms and endorsements or their equivalent.

6.3.10.1 Worker's Compensation and Employer's Liability Insurance. The CONTRACTOR shall maintain coverage for all employees engaged in the Work, in accordance with the laws of the State of Florida. The CONTRACTOR also agrees to waive its right of subrogation as part of this coverage. The amount of each insurance shall not be less than:

- a. Workers' Compensation - Florida Statutory Requirements
- b. Employer's Liability - \$100,000.00 Limit Each Accident
\$500,000.00 Limit Disease Aggregate
\$100,000.00 Limit Disease Each Employee

6.3.10.2 Commercial General Liability Insurance. Coverage shall include, but not limited to, Personal and Advertising Injury coverage, Contractual coverage for this AGREEMENT, including any hold harmless and/or indemnification agreement(s), coverage for Independent Contractors, and Broad Form Property Damage coverage. Limits of coverage shall not be less than the following for Bodily Injury, Property Damage and Personal Injury, Combined Single Limits:

General Aggregate	\$2,000,000.00
Products – Completed Operations Aggregate	\$2,000,000.00
Personal and Advertising Injury	\$ 500,000.00
Each Occurrence	\$2,000,000.00
Fire Damage (Any One Fire)	\$ 50,000.00
Specific Contract Aggregate Limits	\$ (same as above)

- a. The Aggregate Limits shall be separately applicable through the use of the endorsement attached hereto as Exhibit D or its equivalent according to the Risk Management Division of the COUNTY.
- b. If the General Liability Insurance required herein is issued or renewed on a "claims made" form, as opposed to the occurrence" form, the retroactive date for coverage shall be no later than the date the Contract Time commences and shall provide that in the event of cancellation or non-renewal the discovery period for insurance claims (Tail Coverage) shall be unlimited.

6.3.10.3 Business Automobile Liability Insurance. Coverage shall be maintained by the CONTRACTOR as to ownership, maintenance, and use of all of its owned, non-owned, leased or hired vehicles with limits of not less than:

- a. Bodily Injury & Property Damage Liability:
\$1,000,000.00 Combined Single Limit Each Accident

6.3.10.4 All Risk Coverage. For purposes of this Agreement, **Builder's Risk** coverage is ___/is not X required; **Installation Floater** coverage is ___/is not X

required. If either or both are required, the CONTRACTOR shall provide said coverage, which shall include the following minimum requirements:

- a. All Risk coverage shall be issued by insurance company(s) approved by the State of Florida Department of Insurance and acceptable to the COUNTY. All coverage and endorsements must be on forms acceptable to the COUNTY. The CONTRACTOR shall pay any and all premiums for this insurance, with any deductibles being the sole responsibility of the CONTRACTOR. If both Builder's Risk and Installation Floater have been specified, no more than one deductible per occurrence shall apply. Maximum deductible per occurrence for this project:

\$ _____ n/a _____.

- b. Limit of coverage shall be 100% of the completed value of any building(s) or structure(s), or 100% of the value of the equipment to be installed, as appropriate; and Installation Floater coverage shall also provide for coverage of the installed equipment, including labor and materials, prior to final completion of the project.
- c. Waiver of Occupancy Clause or Warranty: Policy must be specifically endorsed to eliminate any "occupancy clause" or similar warranty or representation that the building(s) or structure(s) will not be occupied.

6.3.11 Certificates of Insurance. Certificates of Insurance evincing the insurance coverage specified in paragraphs 6.3.10.1 through 6.10.3 inclusive, and in paragraph 6.2.10.4, when required, shall be filed with the Purchasing Department within ten (10) days of the Notice To Apparent Low Bidder. The required Certificates of Insurance shall name the types of policies provided, and shall refer specifically to this Agreement.

6.4 Untimely Submission. The failure of the CONTRACTOR to submit the required Payment Bond, Performance Bond, and Certificates of Insurance within the times required by this Article may result in a delay in issuing the Award. The parties specifically agree that such a delay is neither excusable nor compensable and will not entitle the CONTRACTOR to a change in the Contract Price of Time.

6.5 Indemnification

6.5.1 The CONTRACTOR shall indemnify and hold harmless the COUNTY and the employees and agents of the COUNTY from, and against, all liabilities, claims, suits, demands, damages, losses, and expenses, including, but not limited to attorneys' fees, arising out of, or resulting from, the performance of the Work, provided that any such liability, claim, suit, demand, damage, loss or expense: (a) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and (b) is caused in whole or in part by an 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.

6.5.2 In any and all claims against the COUNTY, or against any of the agents or employees of the COUNTY, 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 the previous paragraph shall not be limited in any way as to the amount or type or damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts, or other employee benefit acts.

6.5.3 The CONTRACTOR shall indemnify and hold harmless the COUNTY and anyone directly or indirectly employed by the COUNTY from and against all claims, suits, demands, damages, losses, and expenses including, but not limited to, attorney's fees, arising out of any infringement of patent rights, copyrights, trademarks, trade dress, or other intellectual property rights held by others, and shall defend all such claims in connection with any alleged infringement of such rights.

6.5.4 The CONTRACTOR shall, at the option of the COUNTY, underwrite on an interim basis all expenses associated with the legal defense of the COUNTY, pending the outcome of any litigation through appeal, with respect to any liabilities, claims, suits, demands, damages, losses, and expenses, including, but not limited to, attorneys' fees, for which the CONTRACTOR may be liable to the COUNTY, in whole or in part, pursuant to 6.5.1-6.5.3 above, irrespective of whether said liabilities, claims, suits, demands, damages, losses, and expenses, including, but not limited to, attorneys' fees, may ultimately be found by a court of law to have been caused, in whole or in part, by the negligence or other fault of the COUNTY. In discharging this duty to the COUNTY, the CONTRACTOR shall strictly account to the COUNTY on a monthly basis for all expenditures so incurred. Upon the conclusion of any litigation through appeal, to the extent that the CONTRACTOR has been found less than fully liable for any liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, the COUNTY shall reimburse the CONTRACTOR for that portion of the reasonable costs of underwriting the legal defense of the COUNTY.

6.5.5 With respect to, and in consideration for, the indemnifications provided herein by the CONTRACTOR, as well as the duty of the CONTRACTOR, at the option of the COUNTY, to underwrite the legal defense of the COUNTY pending the outcome of any litigation through appeal, the COUNTY agrees to pay to the CONTRACTOR as a, separate consideration, the sum of \$50.00, the sufficiency and receipt of which is hereby acknowledged.

6.5.6 Notwithstanding any language to the contrary which may be contained herein, the ultimate duty of the CONTRACTOR to indemnify and hold the COUNTY harmless under this Article 6 shall be limited to the extent that any liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, are caused by the negligence, recklessness, or intentional wrongful misconduct of the indemnifying party and persons employed or utilized by the indemnifying party in the performance of the construction contract.

ARTICLE 7 – RESPONSIBILITIES OF THE CONTRACTOR

7.1 Supervision and Superintendence. The CONTRACTOR shall supervise and direct the Work efficiently and with its best skill and attention. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction unless specifically addressed in the Contract Documents. The CONTRACTOR shall be responsible for seeing that the finished work complies accurately with the Contract Documents. The CONTRACTOR shall cooperate with and be responsible for coordination of the Work with other contractors and/or utilities at the Site in accordance with the Specifications, if applicable. The CONTRACTOR shall attend meetings as requested by the PROJECT MANAGER.

7.1.1 The CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent who shall not be replaced without written notice to the PROJECT MANAGER except under extraordinary circumstances. The CONTRACTOR shall provide Notice to the COUNTY of the identity of the superintendent at the Pre-construction Conference, and the COUNTY shall at that time be provided with a 24-hour, 7 days-per-week telephone number for the superintendent which shall remain valid until Final Completion. The superintendent shall be the representative of the CONTRACTOR at the Site and shall have authority to act on behalf of the CONTRACTOR. All communications given to the superintendent shall be as binding as if given to the CONTRACTOR.

7.2 Labor, Materials, and Equipment. The CONTRACTOR shall provide and pay for competent, suitable, qualified personnel to survey and layout the Work and perform construction as required by the Contract Documents. The CONTRACTOR shall at all times maintain good discipline and order on the Site.

7.2.1 The CONTRACTOR shall furnish and pay for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities, and all other facilities and incidentals whether temporary or permanent necessary for the execution, testing, initial operation, and completion of the Work as required by the Contract Documents.

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

7.2.3 All materials and equipment shall meet or exceed contract specifications and, except as may otherwise be provided in the Contract Documents, shall be new and of good quality. When requested by the PROJECT MANAGER, the CONTRACTOR shall furnish promptly a statement of the origin, compositions, and manufacture of any and all materials to be used in the construction of the Work, together with samples that may be subjected to the tests provided for in the Specifications, to determine their quality and fitness for the Work. The CONTRACTOR shall further promptly supply, at the request of the PROJECT MANAGER, certification from the supplier of any material to be incorporated into the Work that said material meets or exceeds the Specifications.

7.2.4 At any time during the course of the CONTRACT, with respect to any and all materials and equipment to be used in the construction of the Work, the PROJECT MANAGER may request, and upon such request the CONTRACTOR shall furnish in form and substance satisfactory to the PROJECT MANAGER within ten (10) days, documentation which provides reasonable assurances to the COUNTY that the CONTRACTOR will be able to furnish said materials and equipment, all of proper quality and quantity, at bid prices, in a timely manner. Any and all risk of fluctuation in the market price of materials or equipment, or the availability thereof, shall remain at all times the sole responsibility of the CONTRACTOR.

7.3 Substitute Materials or Equipment. In the event the CONTRACTOR notifies the PROJECT MANAGER that certain materials or equipment described in the CONTRACT cannot be procured by the CONTRACTOR for the project, or should the DIRECTOR, upon the recommendation of the PROJECT MANAGER, find to be inadequate the documentation submitted by the CONTRACTOR in response to a request for reasonable assurances of ability to furnish the materials or equipment as described above, the COUNTY may, as its option:

- a. Waive any specification with respect to said materials or equipment, authorize acceptable substitute materials or equipment, and make an appropriate adjustment to the amounts due the CONTRACTOR for the cost of said materials or equipment, including labor, and other expenses associated with the change; or
- b. Procure the materials or equipment itself and charge the actual cost thereof, including labor and other incidental expenses incurred by the COUNTY, to the CONTRACTOR by deducting said costs and expenses from amounts otherwise due the CONTRACTOR.

Approval of any change in costs or schedule as a result of tentative acceptance of the substitute by the DIRECTOR, based on the recommendation of the PROJECT MANAGER, shall be by Changer Order.

7.4 Concerning Subcontractors

7.4.1 The CONTRACTOR may not subcontract overall management obligations pertaining to the Work, or any substantial component thereof, and not more than forty percent (40%) of the Work shall be subcontracted under any circumstances. This limitation on subcontracting shall not apply to any aspect of the Work that involves the supply of equipment or materials alone. The CONTRACTOR shall retain ultimate liability for all contractual obligations under the Contract Documents. The CONTRACTOR shall further be fully responsible for all acts and omissions of SUBCONTRACTORS, and of persons directly or indirectly employed by them, and of persons for whose acts any of them may be liable to the same extent as if the CONTRACTOR had employed them. Nothing in the Contract Documents shall create any contractual relationship between any SUBCONTRACTOR and the COUNTY or any obligation on the part of the COUNTY to pay or to see to the payment of any monies due any SUBCONTRACTOR, except as may otherwise be required by law. The

COUNTY may furnish to any SUBCONTRACTOR, to the extent practicable, evidence of amounts paid to the CONTRACTOR for specific Work done.

7.4.2 Any divisions and sections of the Specifications and the identifications of any Drawings shall not control the CONTRACTOR in dividing Work among SUBCONTRACTORS or delineating the Work to be performed by any specific trade.

7.4.3 The CONTRACTOR agrees to bind specifically every SUBCONTRACTOR, by way of an appropriate written agreement, to the applicable terms and conditions of the Contract Documents, including but not limited to the General Conditions, Special Conditions, and Technical Specifications, for the benefit of the COUNTY.

7.4.4 All Work performed for the CONTRACTOR by a SUBCONTRACTOR shall be pursuant to an appropriate written agreement between the CONTRACTOR and the SUBCONTRACTOR which shall contain provisions that waive all rights the contracting parties may have against one another for damages cause by fire or other perils covered by insurance, except such rights as they may have to proceeds of such insurance held by the COUNTY as trustee. The CONTRACTOR shall pay each SUBCONTRACTOR an appropriate amount determined by value of Work, of any insurance monies received by the CONTRACTOR under this insurance.

7.4.5 County as Intended Beneficiary of Subcontracts. The COUNTY shall be an intended substantial beneficiary of the written agreements between the CONTRACTOR and its SUBCONTRACTORS.

7.5 Patent Fees and Royalties. The CONTRACTOR shall pay all license fees and royalties, and shall assume all costs incident to the use of any invention, design, process, or device which is the subject of patent rights or copyrights held by others.

7.6 Permits. The CONTRACTOR shall secure and pay all construction permits, licenses, governmental charges and inspection fees, and all public utility charges that are applicable and necessary for the execution of the Work at the time of its Bid. A permit allowance may be established in the Bid Proposal. In the absence of a permit allowance being established, all permit costs shall be included in the base bid. Permits, if any, which are provided and paid for by the COUNTY, are listed in the Contract Documents. Any delays associated with the permitting process will be considered for time extensions only, and *no damages or additional compensation for delay will be allowed.*

7.7 Laws and Regulations. The CONTRACTOR shall give all notice and comply with all laws, ordinances, rules, and regulations applicable to the Work. If the CONTRACTOR observes that any of the Contract Documents are contradictory to such laws, rules, and regulations, the CONTRACTOR will notify the PROJECT manager promptly in writing. An appropriate Change Order shall then be used to institute any necessary changes. If the CONTRACTOR performs any Work that it knows or should have known to be contrary to such laws, ordinances, rules and regulations and without such notice to the PROJECT MANAGER, the CONTRACTOR shall bear all related costs.

7.8 Use of Premises. The CONTRACTOR shall confine its equipment, the storage of materials and equipment, and the operations of its workers to the area permitted by law, ordinances, permits, or the requirements of the Contract Documents. The CONTRACTOR shall not unreasonably encumber the Site with materials and equipment. Any loss or damage to the materials or equipment of the CONTRACTOR or of any SUBCONTRACTOR shall be solely at the risk of the CONTRACTOR.

7.8.1 The CONTRACTOR shall not load or permit any part of any structure to be loaded in any manner that will endanger the structure. The CONTRACTOR shall not subject any part of the Work or adjacent property to stresses or pressures that will endanger them.

7.9 Record Drawings

7.9.1 The CONTRACTOR shall keep at the Site and in good order one record copy of the Contract Documents, the Construction Plans, and the Shop Drawings. These documents shall be annotated on a continuing basis to show all changes made during the construction process. These shall be available to the PROFESSIONAL and the PROJECT MANAGER and shall be submitted to the PROJECT MANAGER prior to, or contemporaneously with, the Application for Final Payment. The CONTRACTOR shall provide record drawings in accordance with the Technical Specifications.

7.9.2 For water and wastewater facilities, the minimum requirements for record drawings are specified in the Special Conditions.

7.10 Safety and Protection

7.10.1 The CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work during the term of the Agreement. The CONTRACTOR shall take all necessary precautions for the safety of and will provide the necessary protection to prevent damage, injury, or loss to:

- a. All employees on the Work and other persons who may be affected by it;
- b. All the Work and all materials or equipment to be incorporated, whether in storage on or off the Site. The CONTRACTOR shall assume all risk of loss for stored equipment or materials, irrespective of whether the CONTRACTOR has transferred the title of the stored equipment or materials to the COUNTY; and
- c. Other property at the Site or adjacent to it, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

7.10.2 The CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. CONTRACTOR shall erect and maintain, as required by the conditions and progress of the Work or as otherwise required or

directed by the COUNTY, all necessary safeguards for safety and protection of persons and property throughout the term of the Agreement. CONTRACTOR shall notify owners of adjacent property and utilities when execution of Work may affect them prior to start of work. All damage, injury, or loss to any property caused directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable shall be remedied by the CONTRACTOR.

7.10.3 The CONTRACTOR shall designate a responsible member of its organization whose duty shall be the prevention of accidents at the Site. This person shall be the superintendent of the CONTRACTOR unless otherwise designated in writing by the CONTRACTOR to the PROJECT MANAGER.

7.11 Emergencies. In emergencies affecting the safety of persons, the Work or property at the Site or adjacent thereto, the CONTRACTOR, without special instructions or authorization from the PROJECT MANAGER, and then only if time or circumstances do not permit such special instructions or authorization, is obligated to prevent or mitigate threatened damage, injury, or loss. The CONTRACTOR shall give the PROJECT MANAGER written notice that the emergency provision has been invoked and shall state the reasons therefore within twenty-four (24) hours of the incident. If the CONTRACTOR believes the emergency resulted in additional Work, and otherwise untimely claim for a Change Order is permissible and may be submitted in accordance with the procedures set forth herein.

7.11.1 The CONTRACTOR shall immediately notify the PROJECT MANAGER of all events involving personal injuries to any person on the Site, whether or not such person was engaged in the construction of the Project, and shall file a written report on such person(s) and any other events resulting in property damage of any amount within five (5) days of the occurrence of each such event.

7.11.2 The PROJECT MANAGER upon learning of an emergency situation threatening the safety of persons or the integrity of property shall immediately report the circumstances to the DIRECTOR. If the DIRECTOR is unavailable to provide direction, or if the circumstances do not allow the PROJECT MANAGER a reasonable opportunity to seek guidance from the DIRECTOR, the PROJECT MANAGER may direct the CONTRACTOR to call out work crews, equipment and materials to prevent threatened damage, injury or loss. The CONTRACTOR shall be obligated to comply with any directions issued by the PROJECT MANAGER when the PROJECT MANAGER has determined that an emergency situation exists. If the CONTRACTOR believes the emergency resulted in additional work, an otherwise untimely claim for Change Order is permissible and may be submitted in accordance with the procedures set forth herein.

7.12 Submittals and Samples

7.12.1 After checking and verifying all field measurements, the CONTRACTOR shall promptly submit to the PROFESSIONAL for approval, in accordance with the accepted schedule of submittals, all Submittals required by the Contract Documents. All Submittals shall have been checked by and stamped with the approval of the CONTRACTOR and

identified as the PROFESSIONAL may require. The data shown on or with the Submittals will be complete with respect to dimensions, design criteria, materials and any other information necessary to enable the PROFESSIONAL to review the Submittal as required. At the time of each submission, the CONTRACTOR shall give notice to the PROFESSIONAL of all deviations that the Submittal or sample may have from the requirement of the Contract Documents.

7.12.1.1 The CONTRACTOR shall submit to the PROJECT MANAGER for review and recommendation to the DIRECTOR for approval, within ten (10) days after Notice To Apparent Low Bidder, a preliminary Schedule of Values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts insufficient detail to serve as the basis for progress payments during construction. Such prices shall include an appropriate amount of overhead and profit applicable to each item of Work that will be confirmed in writing by the CONTRACTOR at the time of submittal.

7.12.1.2 The PROFESSIONAL shall review and approve Submittals. This review and approval by the PROFESSIONAL shall be only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The CONTRACTOR will make any corrections required by the PROFESSIONAL and resubmit the required number of corrected copies until approved. The signature, initials, or stamp of approval of the CONTRACTOR on any Submittal shall constitute its representation to the PROFESSIONAL and COUNTY that the CONTRACTOR has determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, and that each Submittal has been reviewed or coordinated with the requirements of the Work and the Contract Documents.

7.12.1.3 No Work requiring a Submittal shall commence until the PROFESSIONAL has approved the Submittal. A copy of each approved Submittal shall be kept in good order by the CONTRACTOR at the Site and shall be available to the PROFESSIONAL and COUNTY staff. Any delays associated with the submittal process will be considered for time extensions only, and *no damages or additional compensation for delay will be allowed*. No time extensions will be allowed for delays not attributable to either the COUNTY or the PROFESSIONAL.

7.12.1.4 The approval by the PROFESSIONAL of Submittals shall not relieve the CONTRACTOR of its responsibility for any deviations from the requirements of the Contract Documents unless the CONTRACTOR has called the attention of the PROFESSIONAL and the PROJECT MANAGER to such deviation in writing at the time of submission, and the PROJECT MANAGER, with the consent of the DIRECTOR, has given written approval to the specific deviation; any such approval by the PROFESSIONAL alone shall not relieve the CONTRACTOR from responsibility for errors or omissions in the Submittals.

7.12.1.5 To facilitate review, the CONTRACTOR shall number consecutively each Submittal. This numbering system shall be in order of Submittal. Any re-submittal required shall have the same number as the original Submittal followed by notation signifying that this

is a second or third Submittal (e.g. "14-2nd submittal"). All Submittals shall provide a space for the review stamp of the PROFESSIONAL, preferably on the first page. In addition, all Submittals shall contain the following notation completed by the CONTRACTOR:

Project Number and Name: _____

Submittal Number: _____

Deviations: _____

None: _____

As listed: _____

Reference Specification Number: _____

Reference Drawing Number: _____

Space Requirement: _____

As designed: _____

Different, as listed: _____

Contractor has reviewed and submitted for approval.

Signature: _____ Date: _____

The review of a particular Submittal will be undertaken only if the above such information is provided.

7.13 Cleaning Up. The CONTRACTOR shall maintain the Site free from accumulations of waste materials, rubbish, and other debris resulting from the Work on a daily basis or as required. At the completion of the Work, the CONTRACTOR shall remove all waste materials, rubbish, and debris from the Site as well as all tools, construction equipment and machinery, and surplus materials and will leave the Site clean and ready for occupancy by the COUNTY. In addition to any other rights available to COUNTY under the Contract Documents, the failure of the CONTRACTOR to maintain the Site may result in the withholding by the COUNTY of any amounts due CONTRACTOR. The CONTRACTOR will restore to original condition those portions of the Site not designated for alteration by the Contract Documents.

ARTICLE 8 – WORK BY OTHERS

8.1 The COUNTY may perform additional work related to the Project with its own forces, or may carry out such work through direct contract with third-party contractors. The CONTRACTOR shall provide any third-party contractors, including, but not limited to, the employees, agents, subcontractors, and suppliers of such third-party contractors (or of the forces of the COUNTY performing the additional work), reasonable opportunity for the introduction and storage of materials and equipment, and for the execution of work, and shall properly connect and coordinate its Work with theirs. The CONTRACTOR is not entitled to exclusive use of the Site.

8.2 If any part of the Work of the CONTRACTOR depends (for proper execution or results) upon the work of any such third-party contractor (or of the COUNTY), the CONTRACTOR will inspect and promptly report to the PROJECT MANAGER in writing any defects or deficiencies in such work that render it unsuitable for such proper execution and results with respect to the Work. The failure of the CONTRACTOR to so report shall constitute an acceptance of the other work, except as to defects and deficiencies that may appear in the other work after the execution of its Work. The CONTRACTOR shall be entitled to extension of time, *but not to damages or additional compensation from the COUNTY related to delay*, whether caused by such third-party contractors, or the COUNTY, absent fraud, bad faith, or active interference by the COUNTY which is accompanied by an actual malicious intent on the part of the COUNTY to cause delay.

8.3 The CONTRACTOR will do all cutting, fitting, and patching of its Work that may be required to make its several parts come together properly, and fit it to receive or be received by such third-party work. The CONTRACTOR will not endanger any work of others by cutting, excavating, or otherwise altering such other work and will only cut or alter such other work with the written consent of the PROJECT MANAGER, and only if such alteration will not increase the Contract Price or Contract Time.

8.4 If the performance of additional work by third-party contractors or the COUNTY is not noted in the Contract Documents prior to the execution of the Agreement, written notice shall be given to the CONTRACTOR prior to starting any such additional work. If the CONTRACTOR believes that the performance of such additional work by the COUNTY or others involves additional expense or entitles it to an extension of the Contract Time, the CONTRACTOR may make a claim as provided in Articles II, 12, and 13.

ARTICLE 9 -- RESPONSIBILITIES OF THE COUNTY

9.1 The COUNTY shall issue all communications to the CONTRACTOR through the PROJECT MANAGER, except for authorization required by Change Order pursuant to the Contract Documents.

9.2 The COUNTY shall furnish the data required under the Contract Documents, and shall make payments to the CONTRACTOR when due as provided in Article 13.

9.3 The responsibilities of the COUNTY for providing lands, easements, and engineering surveys to establish reference points are set forth in Article 5.

ARTICLE 10 – STATUS OF THE PROFESSIONAL DURING CONSTRUCTION

10.1 County's Representative. The PROFESSIONAL shall be a representative of the COUNTY during the construction period. The duties, responsibilities, and limitations of authority of the PROFESSIONAL as the COUNTY'S representative during construction are set forth in these General Conditions, and shall not be extended without written designation from the Department administering the Project.

10.2 Visits to the Site. The PROFESSIONAL shall make periodic visits to the Site to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents.

10.3 Clarifications and Interpretations. The PROFESSIONAL shall issue such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as may be determined necessary, or as reasonably requested by the CONTRACTOR, which shall be consistent with, or reasonably inferable from the overall intent of the Contract Documents. If the CONTRACTOR believes that a written clarification and interpretation entitles it to an increase in the Contract Price, and/or Contract Time, the CONTRACTOR may make a claim as provided for in Article 11, 12 and 13.

10.4 Rejecting Defective Work. The PROFESSIONAL has the authority to disapprove or reject Work that is defective. The PROFESSIONAL also has authority to require special inspection or testing of the Work at the CONTRACTOR'S expense, as provided in Article 14, whether or not the Work is fabricated, installed or completed.

10.5 Resident Engineer. The PROFESSIONAL may furnish a full or part-time Resident Engineer and other personnel to assist it in carrying out services at the Site. The duties, responsibilities, and limitations of authority of any such Resident Engineer and other personnel are set forth in the Special Conditions, if applicable.

10.6 Decisions on Disagreements. The PROFESSIONAL shall interpret the requirements of the Contract Documents and determine the acceptability of the Work. If CONTRACTOR disagrees with the opinion of the PROFESSIONAL, CONTRACTOR shall refer claim, disputes, and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents initially to the PROJECT MANAGER in writing with a request for a formal decision. The PROFESSIONAL will render in writing an opinion concerning the request of the CONTRACTOR for a formal decision and shall submit same to the PROJECT MANAGER. After receipt of the written opinion of the PROFESSIONAL and all information requested from CONTRACTOR, the PROJECT MANAGER shall make a recommendation to the DIRECTOR, who shall then render a formal decision in writing. Written notice of each such claim, dispute, and other matter shall be delivered by the CONTRACTOR to the PROJECT MANAGER within seven (7) days of the first occurrence of the circumstances giving rise to the claim, dispute, or other matter. Written supporting data will be submitted to the PROJECT MANAGER within fifteen (15) days after said first occurrence unless the PROJECT MANAGER, with the consent of the DIRECTOR, allows additional time. If CONTRACTOR fails to comply strictly with these notice and submittal time periods, the CONTRACTOR shall be deemed to have waived its right to assert any claim that the CONTRACTOR might otherwise have had concerning any such matter.

10.7 Limitations on the Responsibilities of the Professional. Neither the authority of the PROFESSIONAL to act under this Article or elsewhere in the Contract Documents, nor any decision made in good faith to exercise such authority, shall give rise to any duty or responsibility of the PROFESSIONAL to the CONTRACTOR, any SUBCONTRACTOR, or any of their respective agents or employees.

10.7.1 The PROFESSIONAL shall not be responsible for the construction means, methods, techniques, sequences, or procedures or the safety precautions and programs used. The PROFESSIONAL shall not be responsible for the failure of the CONTRACTOR to perform the Work in accordance with the Contract Documents.

10.7.2 The PROFESSIONAL shall not be responsible for the acts or omissions of the CONTRACTOR, any SUBCONTRACTORS, any of their respective agents or employees, or any other persons performing any of the Work.

ARTICLE 11 – CHANGES IN THE WORK

11.1 Without invalidating the Agreement, the COUNTY may from time to time, order additions, deletions, or revisions in the Work. The CONTRACTOR shall promptly submit a written proposal for the changed work prepared in accordance with Articles 12 and 13. If the proposal request calls only for the deletion of Work, the PROJECT MANAGER, with the consent of the DIRECTOR, may order the partial suspension of any Work related to the proposed deletion, in which case the CONTRACTOR must cease performance as directed; the CONTRACTOR shall not be entitled to additional compensation or an increase in the Contract Time as a result of the suspension. The CONTRACTOR shall not be entitled to claim lost profits on deleted work. All changed Work shall be executed under the applicable conditions of the Contract Documents.

11.2 Additional Work performed by the CONTRACTOR without authorization, as represented by a properly executed Change Order approved by the BOARD, will not entitle the CONTRACTOR to an increase in the Contract Price or to an extension of the Contract Time, except in the case of a *bona fide* emergency as provided in Article 7. No employee or representative of the COUNTY including, but not limited to, the PROJECT MANAGER and the DIRECTOR, has the authority to approve a Change Order on behalf of the COUNTY. ***The effect of this paragraph shall remain paramount and shall prevail irrespective of any conflicting provisions contained in these Contract Documents.***

11.3 Upon agreement between the PROJECT MANAGER and the CONTRACTOR as to changes in the Work to be performed, subject to consent of the DIRECTOR, or with respect to a claim by the CONTRACTOR for Work performed in an emergency as provided in Article 7, the PROJECT MANAGER will prepare a written Change Order to be signed by the CONTRACTOR and submitted by the DIRECTOR to the BOARD for approval.

11.4 It is the responsibility of the CONTRACTOR to notify its SURETY of any changes affecting the general scope of the Work, Contract Price, or Contract Time and to secure the written consent of the Surety to any such changes.

11.5 In the absence of agreement between the PROJECT MANAGER and the CONTRACTOR or consent of the DIRECTOR as provided in paragraph 11.3, the COUNTY may, in its sole discretion, issue a unilateral Change Order to the CONTRACTOR. Pricing of the unilateral Change Order will be in accordance with Section 12.1.5. The Change Order will specify a price, and if applicable, a time extension determined to be reasonable by the

COUNTY. If the CONTRACTOR fails to sign said Change Order, the CONTRACTOR shall nevertheless be obligated to fully perform the work as directed by the Change Order.

11.6 Should the CONTRACTOR make a claim for an increase in Contract Time or an increase in Contract Price, then upon the request of the PROJECT MANAGER, the claim shall be accompanied by an affidavit stating that:

- a. The claim is made in good faith;
- b. The supporting data have been thoroughly reviewed by the CONTRACTOR and are accurate and complete to the best knowledge and belief of the CONTRACTOR; and
- c. The amount requested accurately reflects the contract adjustment for which the CONTRACTOR believes the COUNTY is liable.

Absent such affidavit, if requested by the PROJECT MANAGER, the claim will not be considered. Submission of the affidavit shall be a condition precedent to the commencement by the CONTRACTOR of any action at law or in equity against the COUNTY.

11.7 If the COUNTY determines the CONTRACTOR has submitted a baseless, frivolous, unsupported, exaggerated, or otherwise spurious request for a Change Order or Claim, the COUNTY shall deduct from any amounts due the CONTRACTOR the costs incurred by the COUNTY in reviewing and responding to that Change Order request or Claim. Deductible costs include, but are not limited to, any costs incurred by the COUNTY or its PROFESSIONAL to review and respond to the requested Change Order or Claim.

11.8 The CONTRACTOR shall proceed diligently with performance of the Work as directed by the COUNTY, regardless of pending claims or actions, unless otherwise agreed to in writing.

ARTICLE 12 – CHANGE OF CONTRACT PRICE

12.1 The Contract Price

12.1.1 The Contract Price is as defined in Paragraph 2.1.14. All duties, responsibilities, and obligations assigned to or undertaken by the CONTRACTOR shall be at its expense without change in the Contract Price.

12.1.2 The Contract Price represents the total compensation to which the CONTRACTOR may be entitled under the terms of these Contract Documents, which Contract Price is based upon the estimated quantities of items listed therein or a lump sum price. The actual total compensation paid to the CONTRACTOR for the Work described in these Contract Documents may vary due to:

- a. Adjustments in pay quantity/quantities resulting from changes in item quantity/quantities; and/or

- b. Adjustments in pay quantity/quantities as otherwise permitted by these Contract Documents.

12.1.3 The Contract Price may only be increased or decreased by a written Change Order. Any claim for an increase shall be in writing and delivered to the PROJECT MANAGER within seven (7) days of the first occurrence of the circumstances necessitating an increase. Written supporting data will be submitted to the PROJECT MANAGER within fifteen (15) days after said occurrence, unless the DIRECTOR, in his absolute discretion, allows additional time.

12.1.4 Except as provided for in Section 12.1.5, any Change Order adjusting the compensation to be paid to the CONTRACTOR shall be priced in accordance with the following procedures:

12.1.4.1 Unit Prices Included in the Bid Proposal. The CONTRACTOR and the COUNTY recognize and acknowledge that the quantities shown for those items designated in the Bid Proposal (Part III) as unit price items are approximations prepared by the COUNTY for bid purposes and that the actual compensation payable to the CONTRACTOR for the utilization of such items is based upon the application of unit prices to the actual quantities of items involved as measured in the field and required to complete the Project as originally defined in the Contract Documents. When it is determined by the COUNTY that an addition, deletion, or revision to the Project, as defined in these Contract Documents, is required and affects the quantities required for items designated in the Bid Proposal (Part III) as unit price items, the CONTRACTOR and the COUNTY agree that the compensation payable to the CONTRACTOR for such unit price items shall be adjusted accordingly by a Change Order based upon the application of the appropriate unit prices shown in the Bid Proposal (Part III) to the quantity of the unit price item required to complete the Project as defined in the Contract Documents.

12.1.4.2 Unit Prices Not Included in the Bid Proposal. Unit prices for items not designated in the Bid Proposal (Part III), but which have been mutually agreed upon by the COUNTY and the CONTRACTOR, may be utilized in determining the actual compensation payable to the CONTRACTOR based upon field measured quantities.

12.1.4.3 Lump Sum. When it is determined by the COUNTY that an addition, deletion, or revision to the Project is required, resulting in a change in Work designated in the Bid Proposal as a lump sum item, the amount of increase or decrease in the lump sum price shall be established by mutual agreement of the parties.

12.1.5 If the pricing methods specified in Article 12.1.4 are inapplicable, or if the parties are unable to agree on a price for the changed work, the COUNTY shall establish a reasonable price for the same in accordance with Article 12.2. The COUNTY shall then process a unilateral Change Order, specifying the said reasonable price, in accordance with paragraph 11.5. The CONTRACTOR shall perform the Work as directed in the Change Order.

12.1.6 Failure on the part of the CONTRACTOR to construct any item to plan, or in conformity with authorized dimensions and within the specification tolerances set forth herein, shall result in:

- a. Reconstruction to acceptable tolerances, at no additional cost to the COUNTY;
- b. Acceptance at no pay; or
- c. Acceptance at reduced final pay quantity or reduced unit price, all at the discretion of the COUNTY.

The COUNTY shall make determinations of the aggregate monetary change for items identified as lump sum quantities based upon an analysis of the score of the failure of the CONTRACTOR to construct to plan or in conformity with authorized dimensions and within applicable specification tolerances.

12.2 Cost of Work

12.2.1 The term “Cost of Work”, when used in connection with Change Orders, means the costs necessarily incurred and paid by the CONTRACTOR in the proper performance of the change order work. Except as may be agreed to in writing by the PROJECT MANAGER, such costs shall be in amounts no higher than those prevailing in the relevant market for substantially similar work associated with projects akin to the Project, and shall be limited to the following categories:

- a. Actual cost of Labor (payroll, taxes, fringe benefits, worker's compensation, health and retirement benefits, sick leave) to perform change order work;
- b. Owned Equipment (at lowest applicable equipment rate manual rate);
- c. Rented Equipment (at actual rental rates);
- d. Materials;
- e. Costs of SUBCONTRACTOR;
- f. Extra Bonds and Insurance;
- g. Fee of CONTRACTOR (per Article 12.3).

12.2.2 The CONTRACTOR shall require all SUBCONTACTORS and suppliers to comply with all requirements of, and provide itemizations of, all claims in accordance with this Article.

12.2.3 The term “Cost of the Work”, when used in connection with Change Orders, shall not include any of the following:

a. Payroll costs and other compensation of the officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, job superintendents, project managers, and clerks of the CONTRACTOR, and all personnel employed by the CONTRACTOR, whether at the Site, at the principal office of the CONTRACTOR, at a branch office of the CONTRACTOR, or elsewhere, for general administration of the change order work and not specifically included in the agreed-upon schedule of job classifications, all of which are to be considered administrative costs covered by the Fee of the CONTRACTOR;

b. Extraordinary fringe benefits not specifically identified in Article 12.2;

c. Expenses of the principal and branch offices of the CONTRACTOR, other than the office of the CONTRACTOR at the Site;

d. Field overhead costs, including, but not limited to, the cost on-site temporary facilities and the on-site supervision provided by the CONTRACTOR; compensation for these costs will be considered only if the Final Completion date is extended by a Change Order or Allowance Authorization Release.

e. Any part of the capital expenses of the CONTRACTOR, including interest on the capital used by the CONTRACTOR for the Change Order Work and charges against the CONTRACTOR for delinquent payments;

f. Cost of premiums for all bonds and insurance, whether or not the CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for additional bonds and insurance required because of changes in the Work).

g. Costs due to the negligence of the CONTRACTOR, any SUBCONTRACTOR, or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and correcting for any damage to property;

h. All overhead or general expense costs of any kind (other than as provide in Article 12.3).

12.3 Fee of Contractor

12.3.1 The maximum percentage allowed for the combined overhead (including name office and field office overhead) and profit of the CONTRACTOR shall be as follows:

12.3.1.1 For all such change order work done, or to be done, by the CONTRACTOR alone, a fixed percentage of the total adjustment to the Contract Price shall not exceed ten percent (10%).

12.3.1.2 For all such change order work done or to be done by SUBCONTRACTORS, each SUBCONTRACTOR may add up to ten percent (10%) to its allowable cost of work for combined overhead and profit and the CONTRACTOR may add up to five percent (5%) to the allowable cost of work of the SUBCONTRACTOR for its combined overhead and profit; provided, however, that:

- a. No markup of the cost incurred in connection with premiums for bonds or insurance shall be permitted; and
- b. The total maximum markup allowed by Article 12, including but not limited to the CONTRACTOR, SUBCONTRACTORS, and all lower-tier subcontractors, shall in no event exceed twenty percent (20%) of allowable costs.

12.3.2 For all changes, the CONTRACTOR shall submit an itemized cost breakdown, together with supporting data in such detail and form as the PROJECT MANAGER may prescribe from time to time. When a credit is due, the amount of credit to be allowed by the CONTRACTOR to the COUNTY for any such change which results in a net decrease in cost will be the amount of the actual net decrease in direct cost as determined by the PROJECT MANAGER, with the consent of the DIRECTOR, plus the applicable reduction in overhead and profit. When both additions and credits are involved in any change, the combined overhead and profit shall be calculated on the basis of the net change, whether an increase or decrease. In any event, the minimum detail shall be an itemization of all man-hours required by the discipline or trade, with the unit cost per man-hour and total labor price, labor burden, equipment hours and rate for each piece of equipment, material by units of measure and price per unit, and all other costs specifically itemized, in addition to the overhead and profit markup.

12.4 Cash Allowance. It is understood that the Final Total Bid Price, which shall serve as the basis for the initial Contract Price, includes any allowances named in the Contract Documents. The CONTRACTOR shall cause the Work to be done, using such SUBCONTRACTORS or suppliers, and for such sums, within the limit of the allowances, as the COUNTY may approve. Prior to final payment, the Contract Price shall be adjusted, as required, and an appropriate Change Order issued to reflect actual authorized expenditures made against the allowances. The CONTRACTOR agrees that the initial Contract Price includes such sums as it deems proper for all cost, overhead, and profit required for cash allowances. The CONTRACTOR further agrees that in the event the COUNTY authorizes only a portion of the allowance work, the CONTRACTOR shall receive the amount for Work actually performed as set forth in the Contract Documents for cash allowance upon submittal of the proper documentation. Reductions or increases in the Work will not entitle CONTRACTOR to any further increase in overhead and profit.

ARTICLE 13 – CHANGE OF CONTRACT TIME

13.1 The Contract Time may only be changed by way of a Change Order. Any request for an extension in the Contract Time shall be made in writing and delivered to the PROJECT MANAGER within seven (7) days of the first occurrence of the circumstances giving rise to

the claim therefore. Written supporting data will be submitted to the PROJECT MANAGER within fifteen (15) days after such occurrence unless the PROJECT MANAGER, with the consent of the DIRECTOR allows additional time. All claims submitted by the CONTRACTOR for adjustments to the Contract Time must set forth in detail the reasons for, and causes of, the delay, and clearly indicate why the subject delay was beyond the control or fault of the CONTRACTOR.

13.1.1 If the CONTRACTOR is delayed at any time in the performance, progress, commencement, or completion on the Work by any act or neglect of the COUNTY or the PROFESSIONAL, or by any employee of either of them, or by any third-party contractor employed by the COUNTY, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties, utility conflicts which could not have been identified or foreseen by the CONTRACTOR through the exercise of reasonable diligence, or any causes beyond the control or fault of the CONTRACTOR, then the Contract Time shall be extended by Change Order for such reasonable time as the COUNTY may determine. The CONTRACTOR shall be entitled to an extension of time for such causes, but only for the number of days of delay which the COUNTY may determine to be solely due to such causes, and then only to the extent that such causes actually delay the completion of the Project, and only if the CONTRACTOR shall have strictly complied with all the requirements of the Contract Documents. Notwithstanding anything in the Contract Documents to the contrary, no interruption, interference, inefficiency, suspension or delay in the performance, progress, commencement or completion of the Work for any cause whatsoever, including those for which the COUNTY or the PROFESSIONAL may be responsible in whole or in part, shall relieve the CONTRACTOR of the duty to perform, or give rise to any right to damages or additional compensation from the COUNTY. The sole and exclusive remedy of the CONTRACTOR against the COUNTY for interruption, interference, inefficiency, suspension or delay of any aspect of the Work shall be the right to seek an extension of the Contract Time in accordance with the procedures set forth herein. This paragraph shall apply expressly to claims for early completion, as well as claims based upon late completion.

13.1.2 The CONTRACTOR shall become familiar with, and prepare for, the normal weather conditions existing in Pasco County, Florida throughout the course of any given year. Normal weather conditions are expected to impact the Work in numerous ways, including, but not limited to, those impacts caused by delays during and after periods of rainfall, temporary flooding and ponding, wet ground, high winds and debris. For purposes of this Article 13, the term "normal weather conditions", includes both high rainfall caused by periodic "El Niño" events and low rainfall caused by periodic drought conditions. By execution of the Agreement (Part IV), the CONTRACTOR acknowledges that the Contract Time constitutes a sufficient time in which to complete the Work, and that the bid and subsequent schedule of the CONTRACTOR anticipates and includes unfavorable weather conditions which may occur during the Contract Time. The consequences and impact of such unfavorable weather conditions are neither excusable nor compensable.

13.1.2.1 If adversely affected by a hurricane or other extreme weather event for which the Governor of the State of Florida or the BOARD has declared to have created an emergency within the geographical area which includes the site of the Work, then the COUNTY may, but is not obligated to, approve a request by the CONTRACTOR for an

\\BCCATTY01\County_Data\cau12-JMF\Public\Paving Assessment 4\Bid Doc\04.Part II.A. General Conditions.doc

extension of the Contract Time. The CONTRACTOR acknowledges that the following conditions must all have taken place before the CONTRACTOR may apply for a Change Order requesting additional time to compensate for delays due to extreme weather events:

- a. Unfavorable weather conditions from a hurricane or other extreme weather event, for which an emergency has been declared by the Governor or the BOARD, actually existed at the Project Site for one or more workdays;
- b. As a direct result of the unfavorable weather conditions, the CONTRACTOR was unable to perform critical path work for a continuous period of more than eight (8) hours on each specific day;
- c. The CONTRACTOR had taken precautions, such as, but not limited to, proper drainage, temporary drainage or diversion, and pumping (including pre- and post-shift pumping) to mitigate the impact of such unfavorable weather conditions;
- d. The CONTRACTOR was scheduled, and actually attempted, to perform Work.
- e. The CONTRACTOR took prudent, appropriate, and necessary steps to secure the site, including, but not limited to, securing, and storing materials and equipment, and removing materials and equipment, in advance of unfavorable weather conditions.

13.1.3 All time limits stated in the Contract Documents are of the essence of this Agreement. The provisions of this Article, however, shall under no circumstance preclude recovery of liquidated damages.

13.1.4 As a condition precedent to receiving an extension of the Contract Time for delay on any portion of the Work, the CONTRACTOR shall reasonably reschedule the Work so as to minimize the impact of the delay and to allow continued progress on the unaffected portions of the Work.

ARTICLE 14 – WARRANTY AND GUARANTEE: ACCEPTANCE OF DEFECTIVE WORK

14.1 Warranty and Guarantee. The CONTRACTOR warrants and guarantees to the COUNTY that all materials and equipment will be new unless otherwise specified, and that all Work will be of good quality, performed in a workmanlike manner, free from faults or defects, and in accordance with the equipment of the Contract Documents and any inspections, tests, or approvals referred to in this Article for a minimum period of one year following the date of Final Acceptance. To the extent the Work may be required in order to achieve and maintain compliance with any permit issued by any federal or state authority (e.g., mitigation planting required as a condition of a permit by the Southwest Florida Water Management District) and no written final approval by said authority has been received within one year following Final Acceptance, the CONTRACTOR shall warrant and guarantee that portion of the Work

beyond one year and until such time as written final approval has been issued by the applicable authority. All unsatisfactory Work, all faulty Work, and all Work not conforming to the requirements of the Contract Documents, or to such inspections, tests, approvals, or to any and all applicable building, construction and safety requirements, shall be considered defective. The PROJECT MANAGER shall give notice of all defects to the CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article.

14.2 Tests and Inspections

14.2.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority with jurisdiction over the Contractor or the Work require the Work, or any portion thereof, to be specifically inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR shall give the PROJECT MANAGER timely Notice when the Work to be tested is ready for testing. The testing firm(s) shall be supplied by the CONTRACTOR, subject to the approval of the COUNTY in its absolute discretion, and all inspections, tests, or approvals to be provided by the CONTRACTOR shall be timely identified in writing by the CONTRACTOR to the PROJECT MANAGER. For all required inspections, tests, and approvals on any Work prepared, performed, or assembled away from the Site, the CONTRACTOR will furnish the PROJECT MANAGER with the required certificates of inspection, testing, or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organizations as may be required by law or by the Contract Documents. Prior to testing, the CONTRACTOR shall secure the written approval of the PROFESSIONAL as to the testing for or laboratory to conduct any tests. Materials or Work in place that fail to pass acceptability tests, or where the test results provided by the CONTRACTOR appear to the COUNTY to be unreliable in any way, shall be retested by a testing firm selected by the COUNTY, through the PROJECT MANAGER upon the instructions of the DIRECTOR, and at the sole expense of the CONTRACTOR. The rates charged the CONTRACTOR pursuant to this Article shall be those found in the current annual Testing Contract of the COUNTY, if any, or otherwise in an Exhibit hereto.

14.2.2 Either observations by the PROFESSIONAL or the PROJECT MANAGER, nor inspections, tests, or approvals by persons other than the CONTRACTOR, shall relieve the CONTRACTOR of the obligation to perform the Work in accordance with the requirements of the Contract Documents.

14.3 Access to the Work. For the duration of the Project, the PROFESSIONAL and representatives thereof, other designated representatives of the COUNTY, and authorized representatives of any regulatory agency with jurisdiction over the Work or any aspect thereof, shall at all times be given access to the Work. The CONTRACTOR shall provide proper facilities for such access and observation of the Work, and also for any inspection or testing by others.

14.4 Uncovering the Work

14.4.1 If any Work required to be inspected, tested or approved is covered prior thereto without the prior written approval of the PROJECT MANAGER, or if any Work is covered contrary to the request of the PROJECT MANAGER, the Work shall, if requested by the PROJECT MANAGER, be uncovered for observation, inspection, testing or approval, and replaced at the sole expense of the CONTRACTOR.

14.4.2 If any Work has been covered which either the PROFESSIONAL or the PROJECT MANAGER has not specifically requested to observe, or if the PROFESSIONAL or the PROJECT MANAGER considers it necessary or advisable that covered Work be inspected or tested by others, the CONTRACTOR, upon the written request of the PROJECT MANAGER, shall uncover, expose, or otherwise make available for observation, inspection, or testing that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, the CONTRACTOR alone shall bear the expense of such uncovering, exposure, observation, inspection, testing, and satisfactory reconstruction. If, however, such Work is not found to be defective, the CONTRACTOR shall be allowed an increase in the Contract Price, or an extension of the Contract Time, or both, to the extent directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction, but only if the CONTRACTOR initiates a claim as provided in Articles 11, 12 and 13.

14.5 Stop Work. When Work is defective, or when the CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment, or to make prompt payments to SUBCONTRACTORS for labor, materials, or equipment, or if the CONTRACTOR violates any provision of these Contract Documents, the DIRECTOR may order the CONTRACTOR to stop the Work until the cause for such order has been eliminated. However, this right of the DIRECTOR to stop the Work shall not give rise to any duty on the part of the DIRECTOR to exercise this right for the benefit of the CONTRACTOR or any other party. The CONTRACTOR shall have no right to claim an increase in the Contract Price or Contract Time or other damages for a stop work order under this paragraph.

14.6 Correction or Removal of Defective Work

14.6.1 When directed by the PROJECT MANAGER, the CONTRACTOR shall promptly, without cost to the COUNTY and as specified by the PROJECT MANAGER, either correct the defective Work whether fabricated, installed, or completed, or remove it from the Site and replace it with non-defective Work. If the CONTRACTOR does not correct such defective Work or remove and replace such defective Work within a reasonable time, all as specified in a written notice from the PROJECT MANAGER, the COUNTY may have the deficiency corrected. All direct and indirect costs of such correction shall be paid by the CONTRACTOR or deducted from payment to CONTRACTOR. The CONTRACTOR will also bear the expense of correcting, or removing and replacing all Work of others destroyed or damaged by the correction, removal, or replacement of the defective Work.

14.6.2 After approval of final payment, and prior to the expiration of one year after the date of Final Completion, or such longer period of time as may be prescribed by law or by the

terms of any applicable special guarantee required by the Contract documents, if any Work is found to be defective, incomplete, or otherwise not in accordance with the Contract Documents, the CONTRACTOR shall promptly, without cost to the COUNTY and in accordance with the written instructions of the COUNTY, either correct such defective Work, or if it has been rejected by the COUNTY, remove it from the Site and replace it with non-defective Work. If the CONTRACTOR does not promptly comply with the terms of such instructions, the COUNTY may have the defective Work corrected, removed, or replaced. The CONTRACTOR will pay all direct and indirect costs of such action.

14.7 Acceptance of Defective Work. If, instead of requiring the correction, or the removal and replacement, of defective Work the COUNTY prefers to accept it, the COUNTY may do so. In such case, if acceptance occurs prior to approval of final payment, a Change Order incorporating the necessary revisions in the Contract Documents, including an appropriate reduction in the Contract Price, shall be issued. If the acceptance occurs after approval of final payment, the CONTRACTOR shall pay to the COUNTY an appropriate sum to compensate for the defect in the Work.

14.8 Neglected Work by Contractor

14.8.1 If the CONTRACTOR neglects to execute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, the PROJECT MANAGER may direct the CONTRACTOR to submit a recovery plan and take specific corrective actions including, but not limited to, employing additional workmen, and/or equipment, and working extended hours and additional days, all at no cost to the COUNTY, in order to put the Project back on schedule. If the CONTRACTOR fails to correct the deficiency or take appropriate corrective action, the BOARD may terminate the contract or the right of the CONTRACTOR to proceed with that portion of Work, and may have the Work done by others. The cost of completion under such procedure shall be charged against the CONTRACTOR. A Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including an appropriate reduction in the Contract Price. If the payments due the CONTRACTOR are not sufficient to cover such amount, the CONTRACTOR shall pay the difference to the COUNTY.

14.8.2 When the CONTRACTOR is more than ten percent (10%) behind schedule, based on the approved Project Schedule, the PROJECT MANAGER may deduct from any progress payment to the CONTRACTOR a sum equal to the liquidated damages for the number of days behind schedule. Additional withholding may be made if the PROJECT MANAGER determines the work cannot be completed for the unpaid balance of the Contract Price.

14.8.3 Should the CONTRACTOR work weekends or holidays to regain the schedule, all costs to the COUNTY of associated inspections, construction management and resident engineering shall be identified to the CONTRACTOR, and the Contract Price shall be reduced by a like amount via Change Order.

ARTICLE 15 – PAYMENT AND COMPLETION

15.1 Schedule of Values

15.1.1 Prior to submitting the first Draft Payment Request, the CONTRACTOR shall submit to the PROJECT MANAGER a final Schedule of Values and, if previously requested by the PROJECT MANAGER, cash flow projection for all activities of the Work shown on the accepted schedule, including quantities and unit prices totaling to the Contract Price. This Schedule of Values shall be satisfactory in form and substance to the PROJECT MANAGER and the DIRECTOR, and shall subdivide the Work into component parts in sufficient detail to serve as the basis for measuring quantities in place and calculating amounts for progress payments during construction. Unsupported or unreasonable allocation of the Contract Price to any one activity shall be justification for rejection of the Schedule of Values. Upon approval of the Schedule of Values by the PROJECT MANAGER, with the consent of the DIRECTOR, it shall be incorporated into the most recent COUNTY-approved Application for Payment form. The CONTRACTOR shall not submit an unbalanced Schedule of Values that provides for overpayment to the CONTRACTOR on activities that would be performed first. The Schedule of Values shall be revised, as necessary, and resubmitted until acceptable to PROJECT MANAGER and the DIRECTOR. Once the schedule has been accepted by the PROJECT MANAGER, with the consent of the DIRECTOR, the COUNTY reserves the right, at its exclusive option, to require at any time that the CONTRACTOR honor a particular price contained in the Schedule of Values, if the activity pertaining to it is being deleted or modified.

15.1.2 On unit price contracts, the Schedule of Value shall be in accordance with the Bid Proposal (Part III).

15.1.3 No payment can be made, and no Draft Payment Request or Application for Payment submitted or accepted, until the PROJECT MANAGER with the consent of the DIRECTOR has approved the Schedule of Values, including the activity dollar resources. Every Draft Payment Request and Application for Payment shall delineate all activities on the schedule, the approved value, and previous work completed, current percentage complete requested, and value of percentage requested.

15.1.4 The cash flow projection, if required, shall be a monthly projection of the value of Work in place. If the actual cash flow (represented by the Application for Payment) for any month is less than eighty-five percent (85%) of the projected amount for that month, then the CONTRACTOR may be barred from bidding on other COUNTY projects until the value of Work in place is corrected and within at least ninety-five (95%) of the projected value.

15.2 Draft Payment Requests and Application for Payment

15.2.1 As a strict condition precedent to the submission of any Application for Payment, the CONTRACTOR shall first submit to the PROJECT MANAGER a Draft Payment Request, which shall be on the most recent COUNTY-approved Application for Payment form, and clearly designated by the word "DRAFT" in the top-right corner of each page. The Draft Payment Request shall include all documentation that the CONTRACTOR must submit in connection with the Application for Payment, including a proposed Schedule of Values that

properly reflects all Work to the date of the request. The PROJECT MANAGER shall promptly review the Draft Payment Request and proposed Schedule of Values for possible errors, deficiencies, discrepancies, or disputes. If the PROJECT MANAGER, with the consent of the DIRECTOR, determine(s) that the Draft Payment Request and proposed Schedule of Values are acceptable as originally submitted, the PROJECT MANAGER shall, within twenty (20) business days of their receipt, direct the CONTRACTOR in writing to prepare and submit the Application for Payment, all in proper form and suitable for signature, to the designated reviewer named below. The PROJECT MANAGER shall also provide a contemporaneous copy of that notice to the designated reviewer. If the PROJECT MANAGER, with the consent of the DIRECTOR, determines that errors, deficiencies, discrepancies, or disputes exist as to any of the amounts claimed by the CONTRACTOR, the PROJECT MANAGER shall promptly notify the CONTRACTOR in writing of the existence thereof, and the PROJECT MANAGER and the CONTRACTOR shall work informally and in good faith to resolve the problems identified. Should a complete resolution not be achieved within twenty (20) business days following the receipt by the PROJECT MANAGER of the Draft Payment Request and proposed Schedule of Values, then the PROJECT MANAGER shall notify in writing the designated reviewer as to the unresolved matters, and the CONTRACTOR may proceed to prepare and submit the Application for Payment to the designated reviewer.

The designated reviewer for this Project shall be:

**Administrative Services Manager
West Pasco Government Center – Suite 320
7530 Little Road
New Port Richey, Florida 34654**

15.2.2 Application for Payment shall be made no earlier than thirty (30) days after the Contract Time has commenced, and monthly thereafter, but not more often than once a month. The Application for Payment, when submitted, shall be filled out accurately and signed by the CONTRACTOR, covering the Work completed as of the date of the Application and supported by such data as required by the DEPARTMENT. The CONTRACTOR shall certify in writing that all SUBCONTRACTORS and suppliers have been paid for acceptable work and materials from previous progress payments received; less any retainage, prior to the receipt of any further progress payments. The CONTRACTOR shall submit an Application for Payment on the most recent COUNTY-approved form, and which shall include the aforementioned certification. If payment is requested on the basis of materials or equipment not incorporated in the Work, but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by such supporting data as will establish the title of the COUNTY to the material and equipment and protect its interest therein, including applicable insurance. Payment for stored materials, in whole or in part, shall be at the sole discretion of the COUNTY. The CONTRACTOR may request payment by electronic funds transfer (EDR).

15.2.3 Upon receipt by the designated reviewer, the Application for Payment shall be date-stamped "Received" and forwarded to the Office of the Clerk of the Court for pre-audit review and processing. If the Office of the Clerk of the Court determines the Application for

Payment to be deficient in any respect, it shall so notify the PROJECT MANAGER in writing within fifteen (15) business days of the date the Application for Payment was stamped as received by the COUNTY, specifying the deficiencies and the requisite action to render the Application for Payment proper. The deficiencies to be identified by the Office of the Clerk of the Court shall specifically include disputed portions of the total amount claimed by the CONTRACTOR. Upon receipt of notice from the Office of the Clerk of the Court, the PROJECT MANAGER shall immediately, and in no event more than twenty (20) business days of the date the Application for Payment was stamped as received by the COUNTY, forward a copy of the written determination by the Office of the Clerk of the Court to the CONTRACTOR and request that the Application for Payment be corrected.

In the event the deficiency in the Application for Payment relates solely to a disputed portion of the total amount claimed, the COUNTY shall pay the undisputed portion within twenty (20) business days of the date the Application for Payment was stamped as received by the COUNTY. Any Application for Payment that has been corrected as to deficiencies identified by the Office of the Clerk of the Court shall be paid within ten (10) business days of the date the corrected Application for Payment was stamped as received by the COUNTY; otherwise, the CONTRACTOR shall be notified within that time of the failure to correct the deficiencies and shall be afforded a second opportunity to correct the Application for Payment.

If, following the second attempt by a CONTRACTOR to submit a proper Application for Payment, the COUNTY continues to find the Application for Payment deficient; it shall so notify the CONTRACTOR in writing within ten (10) business days of the corrected Application for Payment was received by the COUNTY. The CONTRACTOR shall thereafter have thirty (30) calendar days in which to request an administrative review of the dispute, submitting a concise written summary of its position and any supporting documents to the COUNTY ADMINISTRATOR by an acceptable delivery method. Acceptable delivery methods are limited to the following: 1) hand delivery; 2) pre-paid, certified United States first-class mail, return receipt requested; 3) a nationally recognized overnight courier service, such as Federal Express. Delivery shall be to:

**John J. Gallagher, County Administrator
West Pasco Government Center
7530 Little Road – Suite 340
New Port Richey, Florida 34654**

The COUNTY ADMINISTRATOR or his authorized designee, which designee shall not be directly affiliated with the Department managing the Project, shall review the materials submitted by the CONTRACTOR and may solicit and consider relevant information and materials from the managing DEPARTMENT and the Office of the Clerk of the Court. The COUNTY ADMINISTRATOR or authorized designee shall render a final decision on behalf of the COUNTY within sixty (60) calendar days of the date the second corrected Application for Payment was stamped as received by the COUNTY. Should the CONTRACTOR fail to submit a first or second corrected Application for Payment, or otherwise fail to request an administrative review on a timely basis, the CONTRACTOR shall be deemed to have waived any claims in dispute.

15.2.4. Beginning with the second request of the CONTRACTOR for payment, the CONTRACTOR shall submit a properly executed Statement of Satisfaction, on the most recent COUNTY-approved form, from each SUBCONTRACTOR whose work appeared on the prior Application for Payment, and for which the CONTRACTOR has been paid. If the CONTRACTOR is unable to obtain the required Statement(s) of Satisfaction, a properly executed Written Consent from the SURETY for the CONTRACTOR may be accepted in lieu thereof. In the event the CONTRACTOR is unable to furnish either a Statement of Satisfaction from a SUBCONTRACTOR or the Written Consent from the SURETY, the COUNTY may withhold the disputed amount until the CONTRACTOR can provide one of these two documents.

15.3 Retainage

15.3.1 All progress payments shall be subject to a ten percent (10%) retainage until the Project is fifty (50 %) complete and in place as determined by the COUNTY. When fifty percent (50%) of the Work is complete and in place, the CONTRACTOR may submit a written request to the PROJECT MANAGER to reduce the retainage on future progress payments to five percent (5%) for the remaining Work. The PROJECT MANAGER, with the consent of the DIRECTOR, may approve this request provided, however, that the Work has been carried out to the satisfaction of the PROJECT MANAGER. After fifty percent (50 %) of the Project is complete and in place, the CONTRACTOR may submit a payment application for up to one-half of the retainage held on the Project. After such payment is made, all remaining retainage shall be requested by the CONTRACTOR as a component of the Final Payment. Nothing herein shall limit the DIRECTOR's discretionary authority to release retainage held by the COUNTY as provided in Section 218.735(8), F. S.

15.3.2 The CONTRACTOR agrees that if the COUNTY does not withhold retainage from a payment to the CONTRACTOR, the CONTRACTOR will not withhold retainage from the SUBCONTRACTORS who are due funds out of that payment. The CONTRACTOR further agrees that after fifty percent (50%) completion is reached, the CONTRACTOR will not retain more than five percent (5%) from its SUBCONTRACTOR'S payments. All retainage released by the DIRECTOR to the CONTRACTOR shall be released on a *pro rata* basis to SUBCONTRACTORS.

15.4 Warranty of Title of CONTRACTOR. If at any time there shall be evidence of any claim for which, if established, the COUNTY might become liable, and which may be chargeable to the CONTRACTOR, or if the CONTRACTOR shall incur any liability to the COUNTY, or the COUNTY shall have any claim or demand against the CONTRACTOR, of any kind or for any reason, whether related to or arising out of this Agreement or any other agreement between the CONTRACTOR and the COUNTY, and whether or not reduced to judgment or award, the COUNTY shall have the right to retain out of any payment due the CONTRACTOR, or which may become due to the CONTRACTOR, under this Agreement or any other Agreement between the CONTRACTOR and the COUNTY, an amount sufficient to indemnify the COUNTY against such claim, and/or to compensate the COUNTY for, and fully satisfy, such liability, claim or demand, and to charge or deduct all cost of defense or

collection with respect thereto, including, but not limited to, reasonable attorneys' fees, expert consultant fees, and expert witness fees. Should any claim develop after final payment has been made, the CONTRACTOR shall refund to the COUNTY all monies that the latter may be compelled to pay in discharging such claims, or that the latter may have incurred in collecting said monies from the CONTRACTOR.

15.5 Rejection of Applications for Payment by the Director. The DIRECTOR may refuse to approve the whole or any part of any payment if, in the opinion of the DIRECTOR, the DIRECTOR is unable to make the representation that the Application for Payment is acceptable to the COUNTY. The DIRECTOR may also refuse to approve any such Application for Payment or because of subsequently discovered evidence, or the results of subsequent inspections or tests, nullify any such payment previously approved to such extent as may be necessary, in the opinion of the DIRECTOR, to protect the COUNTY from loss because:

- a. The Work is defective;
- b. The Critical Path Method (CPM) schedule or another method of scheduling, as directed, and regular updates, as described in the Technical Specifications, have not been submitted or accepted;
- c. Claims have been filed against the COUNTY for which the CONTRACTOR may be liable;
- d. The Contract Price has been reduced because of Change Order(s);
- e. The COUNTY has been required to correct defective Work or to complete the Work in accordance with Article 14;
- f. Approved Maintenance of Traffic Plan (MOT) or revisions thereto, as directed by the PROJECT MANAGER, have not been submitted;
- g. The Work was executed unsatisfactorily, or the CONTRACTOR failed to clean up as required in Article 7, failed to control dust, failed to control traffic, or otherwise has failed to comply with these Contract Documents.

15.6 Substantial Completion. When the CONTRACTOR believes Substantial Completion has been achieved on the Project, the CONTRACTOR shall certify in writing to the PROJECT MANAGER that the entire Project is substantially complete in accordance with the Contract Documents and request that the PROJECT MANAGER issue a Certificate of Substantial Completion. Thereafter, the PROJECT MANAGER, assisted by other personnel as required, along with the CONTRACTOR, shall undertake an inspection of the Project to determine the status of completion in accordance with the contract specifications. After inspection, if the PROJECT MANAGER does not believe Substantial Completion has been attained with respect to the Project, the PROJECT MANAGER will notify the CONTRACTOR in writing, giving specific reasons why the Project is not substantially complete. If the PROJECT MANAGER considers the Project substantially complete, then upon approval by the

DIRECTOR, the PROJECT MANAGER shall issue a Certificate of Substantial Completion signed by the DIRECTOR. This Certificate of Substantial Completion shall fix the date of Substantial Completion, and will define the remaining deficiencies with respect to the elements outlined in the specifications of this contract.

15.6.1 Substantial Completion cannot occur until all conditions necessary for safe and proper use, occupancy, maintenance and operations are in place.

15.7 Partial Utilization. Where a portion of a Project is sufficiently completed to allow Beneficial Occupancy, but any significant other portions(s) remain(s) uncompleted, the PROJECT MANAGER, with the consent of the DIRECTOR, may direct the CONTRACTOR to permit the COUNTY to take control of the sufficiently completed portions(s), and to operate and utilize said portion(s) by taking Beneficial Occupancy thereof, if the COUNTY believes such use will not significantly interfere with construction of the other parts of the Project.. If the CONTRACTOR is of the opinion that said Beneficial Occupancy is not in the best interests of the COUNTY, it shall give the COUNTY Notice of such an opinion, include with said Notice a statement of every reason that certification of Beneficial Occupancy should not be issued. Otherwise, the CONTRACTOR shall certify to the COUNTY that all critical elements of that part of the Project are sufficiently complete to allow the COUNTY to take Beneficial Occupancy thereof, and request the PROJECT MANAGER to prepare a Certificate of Beneficial Occupancy for said portion(s) of the Project. Thereafter, the PROJECT MANAGER, assisted by other personnel as required, along with CONTRACTOR, shall make an inspection of said portion(s) of the Project to determine the status of completion. If the PROJECT MANAGER considers the portion(s) of the Project so inspected to be ready and appropriate for Beneficial Occupancy, then with the consent of the DIRECTOR, the PROJECT MANAGER will deliver to the CONTRACTOR a Certificate of Beneficial Occupancy to that effect, fixing the date of Beneficial Occupancy as to said portion(s) of the Project, attaching punch list of items to be completed or corrected before final payment on the total Contract, and fixing responsibility between the COUNTY and CONTRACTOR for any outstanding obligations on that part of the Project. The COUNTY shall have the right to occupy and use the portion(s) of the Project after date of Beneficial Occupancy for the portion(s) covered by the Certificate of Beneficial Occupancy, but the PROJECT MANAGER will allow the CONTRACTOR reasonable access to complete or correct items on the list. Acceptance of Beneficial Occupancy shall not negate the obligation of the CONTRACTOR to meet any milestone requirements, including the respective dates of Substantial Completion and Final Completion for the entire Project, as said dates may have been set forth in the Contract Documents. Although Beneficial Occupancy may be established for a portion of the project, warranties for that portion shall not commence until the date of Final Acceptance by the COUNTY, unless the Contract Documents expressly provide otherwise.

15.8 Final Completion

15.8.1 Upon written notice from the CONTRACTOR that the Project is complete, the PROJECT MANAGER shall schedule a final inspection with the CONTRACTOR and any other personnel requested by the PROJECT MANAGER. The PROJECT MANAGER shall, if necessary, notify the CONTRACTOR in writing of any Work this inspection reveals to be defective, or otherwise not in accordance with the Contract Documents. Should the

CONTRACTOR receive notice of such defective or non-conforming Work, the CONTRACTOR shall immediately take all such action as may be necessary to remedy these defects and bring the Project into full compliance with the Contract Documents, following which the CONTRACTOR shall request another such inspection, subject to the procedures and conditions set forth in this paragraph.

15.8.1.1 Final Completion of the Work shall be deemed achieved by the CONTRACTOR when all Work required under the Contract Documents has been satisfactorily completed in accordance with the contract specifications.

15.8.2 After the PROJECT MANAGER has determined that all Work has been completed, the PROJECT MANAGER, with the approval of the DIRECTOR, will issue a Certificate of Final Completion for the Work signed by the DIRECTOR. Warranties will commence on the date of Final Completion.

15.9 Application for Final Payment. After PROJECT MANAGER has issued the Certificate of Final Completion for the Work, the CONTRACTOR may make Application for Final Payment, following the procedure for progress payments. The final Draft Payment Request and Application for Payment shall be accompanied by an Affidavit of Payment of Debts and Claims by the CONTRACTOR, a Subcontractor's Statement of Satisfaction for each subcontractor, as applicable, as well as the Certificate of Final Completion, Certificate of Occupancy or of Beneficial Occupancy (if appropriate), and the Consent of Surety to Final Payment when required, all submitted on forms provided by the COUNTY. Where Certificates of Beneficial Occupancy have been issued for portions of the Project in accordance with Article 15.7, they shall be maintained in the project file.

15.10 Approval of Final Payment. If, on the basis of the observations and review of Work during construction by the PROJECT MANAGER, the final inspection, and a review of the Draft Payment Request, all as required by the Contract Documents, the DIRECTOR, upon the recommendation of the PROJECT MANAGER, is satisfied that the Work has been completed and the CONTRACTOR has fulfilled all of its obligations under the Contract Documents, the PROJECT MANAGER will, within twenty (20) days of receipt of the Draft Payment Request shall, in writing, direct the CONTRACTOR to prepare and submit the final Application for Payment, all in proper form and suitable for signature, to the designated reviewer, and provide a contemporaneous copy of this written notice to the designated reviewer. Processing shall thereafter proceed pursuant to paragraph 15.2.3 hereof. If the PROJECT MANAGER, with the consent of the DIRECTOR, determines that errors, deficiencies, discrepancies, or disputes exist as to any of the amounts claimed by the CONTRACTOR, the PROJECT MANAGER shall, in writing, promptly notify the CONTRACTOR of the existence of any such errors, deficiencies, discrepancies, or disputes, and the CONTRACTOR shall work informally and in good faith to resolve the problems identified. Should a complete resolution not be achieved within twenty (20) business days following the receipt by the PROJECT MANAGER of the Draft Payment Request and proposed Schedule of Values, then the PROJECT MANAGER shall notify in writing the designated reviewer as to the unresolved matters, and the CONTRACTOR may proceed to prepare and submit the final Application for Payment to the designated reviewer for processing in accordance with paragraph 15.2.3 hereof.

15.11 Continuing Obligation of the CONTRACTOR. The obligation of the CONTRACTOR to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. The approval by the COUNTY of any progress payment or Final Payment, the issuance of a Certificate of Substantial Completion, any payment by the COUNTY to the CONTRACTOR under the Contract Documents, any use or occupancy of the Project or any part thereof by the COUNTY (with or without issuance of a Certificate of Beneficial Occupancy), the issuance of a Certificate of Final Completion, the occurrence or absence of any act of acceptance by the COUNTY, or any correction of defective Work by the COUNTY shall not constitute, or be deemed or construed to constitute, an acceptance of Work not in accordance with the Contract Documents, as amended by a properly executed Change Order.

15.12 Waiver of Claims. The making of an Application for Final Payment, or acceptance of Final Payment, shall constitute an absolute waiver of any and all claims by the CONTRACTOR against the COUNTY, except for those previously submitted in writing in accordance with the Contract Documents.

15.13 Liquidated Damages. When the CONTRACTOR is in default for nonperformance within the stipulated Contract Time, including any intermediate Milestone Dates, the PROJECT MANAGER will notify the CONTRACTOR in writing within thirty (30) days after the intermediate Milestone Date, Substantial Completion Date, or Final Completion Date, and shall deduct the liquidated damages in the amount stated in the Contract Documents from any monies due the CONTRACTOR. The DIRECTOR, however, retains discretion to recommend to the BOARD that any portion or all of the liquidated damages be waived in order to advance the best interests of the COUNTY. The deduction of liquidated damages shall be in addition to any retainage withheld. Additional liquidated damages, if any, may be indicated in the circumstances referenced in Subpart C, Technical Specifications, of this Part II of the Contract Documents. Any failure of the COUNTY to provide written notice to the CONTRACTOR within the applicable thirty-day period of its intent to assess liquidated damages shall not constitute a waiver of the right of the COUNTY to liquidated damages, or otherwise relieve the CONTRACTOR of liability for liquidated damages.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.1 Suspension of Work. The DIRECTOR may, at any time, suspend the Work or any portion thereof for a continuous period of not more than ninety (90) days by issuing to the CONTRACTOR a Notice of Suspension. The PROJECT MANAGER, with the consent of the DIRECTOR, shall fix the date on which Work shall be resumed, and the CONTRACTOR shall resume the Work on the date so fixed. The CONTRACTOR shall be allowed an extension of the Contract Time, if directly attributable to any such suspension, as the sole compensation and remedy for the suspension, provided it makes a proper claim for same as provided for in Article 13. The CONTRACTOR shall, under no circumstances, be entitled to any damages or additional compensation for any such suspensions.

16.2 Termination of Work

16.2.1 If the CONTRACTOR is adjudged bankrupt or insolvent, if it makes a general assignment for the benefit of its creditors, if a trustee or receiver is appointed for it or for any of its property, if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws, if it repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or make prompt payments to SUBCONTRACTORS, or prompt payments for labor, materials, or equipment; if it disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction; if it fails to submit the bonds and Certificates of Insurance within the times required by Article 6 of this Agreement; if it disregards the authority of the PROFESSIONAL; or if it otherwise materially violates any provisions of the Contract Documents, then the BOARD may, without prejudice to any other right or remedy and after giving the CONTRACTOR and its SURETY seven (7) days written notice, terminate the services of the CONTRACTOR. Upon termination the COUNTY shall take possession of the Project, and may take possession of all materials, equipment, tools, construction equipment, and machinery thereon owned by the CONTRACTOR, and may finish the Work by whatever method it may deem expedient. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the direct and indirect cost of completing the Project, including compensation for additional professional services, such excess shall be paid to the CONTRACTOR. If such cost exceeds the unpaid balance, the CONTRACTOR shall pay the difference to the COUNTY. Such cost incurred by the COUNTY shall be incorporated in a Change Order. If, after the issuance of Notice of Termination of this Agreement, it is determined for any reason that the CONTRACT was not in default, or that its default was excusable, or that the COUNTY was not entitled to the remedy against CONTRACTOR provided herein, the termination will be deemed to be a termination for convenience pursuant to paragraph 16.2.3, and the remedies of the CONTRACTOR against the COUNTY shall be the same as, and limited to, those afforded under said paragraph.

16.2.2 Where the services of the CONTRACTOR have been so terminated pursuant to paragraph 16.2.1 by the COUNTY, said termination shall not affect any rights of the COUNTY against the CONTRACTOR then existing, or which may thereafter accrue. Any retention or payment of monies by the COUNTY due the CONTRACTOR will not release the CONTRACTOR from any liability whatsoever.

16.2.3 Termination for Convenience

16.2.3.1 The COUNTY may terminate the required performance of Work by the CONTRACTOR under this Agreement, in whole or in part, whenever the COUNTY shall determine that such complete or partial termination is in the best interest of the COUNTY. Any such termination shall be effected by delivery to the CONTRACTOR of a Notice of Termination for Convenience, specifying the extent to which the performance of Work under the Agreement shall be terminated, and the date upon which such termination shall be effective.

16.2.3.2 After receipt of a Notice of Termination for Convenience, and except as otherwise directed by the COUNTY, the CONTRACTOR shall:

- a. Stop Work under this Agreement on the date, and to the extent, specified in the Notice of Termination for Convenience;
- b. Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for the full and proper completion of that portion of the Work under this Agreement not to be terminated;
- c. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination for Convenience;
- d. In the sole and absolute discretion of the COUNTY, the CONTRACTOR shall either:
 1. Assign to the COUNTY, in the manner, at the time, and to the extent directed by the PROJECT MANAGER, with the consent of the DIRECTOR, all of the right, title, and interest of the CONTRACTOR under some or all of the orders and subcontracts so terminated; or
 2. Settle all outstanding liabilities and all claims arising out of such termination of unassigned orders and subcontracts.
- e. Transfer title and deliver to the COUNTY, in the manner, at the times and to the extent, if any, directed by the PROJECT MANAGER, with the consent of the DIRECTOR, the fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the Work terminated by the Notice of Termination for Convenience.
- f. Complete performance of that part of the Work not terminated by the Notice of Termination for Convenience.
- g. Take all such action as may be necessary or prudent, or as the COUNTY may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the CONTRACTOR and in which the COUNTY has, or may acquire, an interest.

16.2.3.3 After the receipt of a Notice of Termination for Convenience, the CONTRACTOR shall submit to the COUNTY its termination claim, in the form and with the certification set forth in paragraph 11.1.6. Such claim shall be submitted promptly, but in no event later than four (4) months from the effective date of termination, unless one or more extensions in writing are granted by the DIRECTOR in his absolute discretion. No claim will be allowed for machinery and equipment rental expense incurred after the effective date of the Notice of Termination for Convenience. Upon the failure of the CONTRACTOR to submit its termination claim within the time allowed, the COUNTY shall determine, on the basis of

information available to it, the amount, if any, due to the CONTRACTOR by reason of the Termination for Convenience.

16.2.3.4 The CONTRACTOR and the COUNTY may agree upon the whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the complete or partial Termination for Convenience, which amount or amounts may include a reasonable allowance for profit on Work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made, and as further reduced by the Contract Price of Work not terminated. The Agreement shall be amended accordingly, and the CONTRACTOR shall be paid the agreed amount.

16.2.3.5 In the event of the failure of the CONTRACTOR and the COUNTY to agree, as provided in paragraph 16.2.3.4, on the whole amounts to be paid to the CONTRACTOR by reason of any Termination for Convenience, the COUNTY shall determine, on the basis of information available to it, with respect to all Work performed prior to the effective date of the Notice of Termination for Convenience, the total (without duplication of any items) cost of such work and a sum, as profit, equal to seven (7) percent of said cost of the Work; provided, however, that if it appears that the CONTRACTOR would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed, and an appropriate adjustment shall be made, reducing the amount of the settlement to reflect the indicated rate of loss. In no event will the CONTRACTOR be entitled to recover any anticipated or lost profit.

16.2.3.6 The total sum to be paid to the CONTRACTOR shall not exceed the total Contract Price, as reduced by the amount of payment otherwise made, and as further reduced by the Contract Price of Work not terminated. Except for normal spoilage, and except to the extent that the COUNTY shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the CONTRACTOR the fair value, as determined by the COUNTY, of property which has been destroyed, lost, stolen, or damaged so as to become undeliverable to the COUNTY.

16.2.3.7 In arriving at the amount due the CONTRACTOR following a Termination for Convenience, there shall be deducted:

- a. All unliquidated advance or other payments on account theretofore made to the CONTRACTOR, applicable to the terminated portion of this Agreement;
- b. Any claim which the COUNTY may have against the CONTRACTOR in connection with this Agreement; and
- c. The agreed price for, or the proceeds from the sale of, any materials, supplies, or other things kept by the CONTRACTOR or sold, pursuant to the provisions hereof, and not otherwise recovered by, or credited to, the COUNTY.

16.3 Cross-Default. Should the CONTRACTOR be determined by the COUNTY to be in default of this Agreement, such default shall constitute a default of all other contracts to which

\\BCCATTY01\County_Data\cau12-JMF\Public\Paving Assessment 4\Bid Doc\04.Part II.A. General Conditions.doc