

Agmt

RESOLUTION NO. 2008- 32

A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF TAMPA AND HORUS CONSTRUCTION SERVICES, INC IN THE AMOUNT OF \$1,056,262.00 FOR CONSTRUCTION SERVICES RELATING TO 7-C-46; PW5980 TECHNOLOGY & INNOVATION DEPARTMENT RELOCATION PROJECT, AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY OF TAMPA; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Resolution No. 2007-1089, the City of Tampa ("CITY") entered into an Agreement with HORUS Construction Services, Inc., ("CONSTRUCTION MANAGER") on November 7, 2007, to provide certain preconstruction management services pertaining to the Technology & Innovation Department Relocation project; and

WHEREAS, the CITY desires to enter into an Agreement to provide construction services for the Technology & Innovation Department Relocation project; and

WHEREAS, compensation for services shall not exceed \$1,056,262.00 as described in the Agreement and funds for payment of said services are available in the appropriate accounts in the Budget of the City of Tampa.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA, THAT:

Section 1. That the Agreement between the City of Tampa and HORUS Corporation Services, Inc., for construction services pertaining to the PW5980 Technology & Innovation Department Relocation project, a copy of which is attached hereto is hereby approved in its entirety or in substantially similar form.

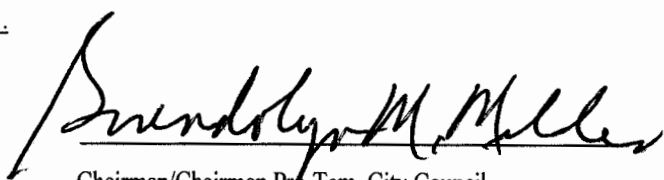
Section 2. The Mayor is authorized to execute and the City Clerk to attest and to affix the official seal to the Agreement for and on behalf of the City of Tampa.

Section 3. Payment of the costs of the services rendered in connection with the Agreement, in the amount of \$1,056,262.00, shall be made from funds provided in the budget of the City of Tampa for the Fiscal Year ending September 30, 2008, in Account No. PW5032IDF-06200 - \$1,056,262.00.

Section 4. The proper officers of the City of Tampa are hereby authorized to do all things necessary in order to carry out the provisions of this Resolution, which shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA ON,

JAN 10 2008


Chairman/Chairman Pro-Tem, City Council

ATTEST:

City Clerk/Deputy City Clerk

Approved as to Legal Sufficiency:

Justin R. Vaske, Assistant City Attorney.

CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR
TECHNOLOGY & INNOVATION DEPARTMENT RELOCATION

PROJECT PW5980

CONTRACT 7-C-46

Between

The City of Tampa, Florida
("City")

And

HORUS Construction Services, Inc.
("Firm")

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**AGREEMENT FOR CONSTRUCTION MANAGEMENT AT RISK
WITH A GUARANTEED MAXIMUM PRICE ("GMP")**

This Agreement (herein called "Agreement" or "Contract") is made between the CITY OF TAMPA, whose address for the purpose of this Agreement is 315 West Kennedy Boulevard, Tampa, Florida 33602, a municipality organized and existing under the laws of the State of Florida ("City"), and HORUS Construction Services, INC., a firm existing under the laws of the State of Florida, the address of which is P.O. Box 10677, St. Petersburg, FL 33733, ("Firm") for the construction of Technology & Innovation Relocation , ("Project") as designed by Heery International, Inc. pursuant to the Project Construction Documents listed in **Exhibit D**, attached hereto and made a part hereof, to be located in Tampa, Florida. The Firm and City agree as set forth below.

ARTICLE 1 DEFINITIONS

1.1 Application for Payment - shall mean an application submitted by the Firm for payment in accordance with the terms of the Agreement on approved forms and containing such information as is required under the Agreement or as may be reasonably required by the City in order to process such application.

1.2 Certificate for Payment - shall mean a certificate issued by the City's Representative stating that on the basis of the City's observations and inspection, the work for which an Application for Payment has been submitted has been completed in accordance with the terms and conditions of the Contract Documents.

1.3 Change Order - shall mean a written order requiring the performance of work or services not otherwise contemplated in the Agreement which also includes appropriate adjustments in the compensation and/or completion date pursuant to Article 10 of this Agreement and which is approved by the City Council and which amends the terms of the Agreement.

1.4 City's Representative - as defined in Section 9.1 hereof.

1.5 Construction Management Fee - as set forth in Section 5.2 hereof.

1.6 Construction Phase Services - as defined in Article 4 hereof.

1.7 Contract Documents - shall mean this Agreement, any Change Orders, Work Directive Changes, Field Orders, all Exhibits to this Agreement, the Design Documents and all drawings and other documents referenced in the Project Construction Documents as listed in **Exhibit D**.

1.8 Cost of Construction - as defined in Section 5.4 hereof.

1.9 Field Orders - shall mean minor changes in the work covered by this Agreement not involving an adjustment to compensation or time under the Agreement and not inconsistent with the intent of the Contract Documents. Such order shall be affected by a written order executed by the City's Representative, in accordance with Section 11.7 of the Agreement.

1.10 Guaranteed Completion Dates - shall mean the dates by which the Firm is to achieve Substantial Completion of the work required of it hereunder, as said dates may be adjusted pursuant to

the terms hereof. The Guaranteed Completion Date is April 4, 2008 or 74 calendar days from the date of signature of the Notice to Proceed (NTP) or the issuance of permits sufficient to allow the start of on-site work (The Start of the Work), whichever comes later.

1.11 Guaranteed Maximum Price ("GMP") - is the total amount which the Firm guarantees that the Cost of Construction for the entire Project shall not exceed One million fifty-six thousand two hundred sixty-two Dollars and No Cents (\$1,056,262.00).

1.12 Owner's Contingency - shall be the amount, if any, set aside in the GMP for which the City shall have sole discretion as to its use.

1.13 Project Construction Documents - shall mean all drawings, plans, documents, specifications and technical material of any nature required for the permitting and construction of the Project as described in **Exhibit D**.

1.14 Substantial Completion - shall mean the stage in the progress of the work when the work or designated portion of the work is sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the work for its intended use.

1.15 Utilities - shall mean all roadway, railways, drainage facilities, or public or private utility facilities, including, without limitation, any potable water facilities, any sanitary sewer facilities, any electrical power facilities, any telecommunication facilities, any television facilities or any gas facilities.

1.16 "Work" shall mean all work required under this Agreement, the Contract Documents or the Project Construction Documents, or any work that is related to the construction of the Project.

1.17 Work Directive Change - shall mean a written directive to the Firm issued on or after the date the Agreement has been executed and signed by the City's Representative ordering additions, deletions or revisions to the scope of the Firm's services under this Agreement. Any change to the Cost of Construction required by a Work Directive Change, not otherwise compensated by means of monies designated in the GMP as 'Owner's Contingency', shall be incorporated in a Change Order which shall include adjustments in compensation and time of performance as are mutually agreed upon by the City and the Firm or which include such adjustments as the City deems appropriate subject to the Firm's right to make claims in connection with such adjustments pursuant to Article 16 of this Agreement. No expenditure of funds designated in the GMP as 'Owner's Contingency' shall be made without prior receipt of a Work Directive Change.

1.18 Business Days are defined as Monday through Friday excluding official City holidays.

1.19 Beneficial Occupancy - shall mean the City's use of the work or portion thereof, excluding that described in 9.1.1 .d, for the purpose intended.

ARTICLE 2 SCOPE AND PHASING OF WORK

2.1 General Scope. The Firm shall construct the Project as specified in and in accordance with the Contract Documents, including, without limitation, the Construction Phase Services described in Article 4 hereof, and otherwise perform all work as is required under the Contract Documents.

2.2 Conditions Precedent. The Firm shall not commence work in connection with the Project until the City has issued a written notice to proceed to the Firm.

ARTICLE 3 DESIGN PHASE SERVICES

3.1 To the extent Design Phase or Construction Documents preparation activities occur during the course of this Agreement, the Firm shall consult with the City upon a mutually agreed upon basis regarding the design and constructability of the Project or portions thereof.

ARTICLE 4 CONSTRUCTION PHASE SERVICES

4.1 Upon satisfaction of the conditions precedent in Article 2 hereof (or waiver of any conditions precedent by the City), the Firm shall immediately commence the Construction Phase Services which shall include the following services:

4.1.1 The Firm shall construct the Project in accordance with the Project Construction Documents approved by the City which are listed in **Exhibit D** and incorporated herein by reference. The Firm's Project Narrative, Detailed Estimate and Document List are all specifically included in this Contract. These documents are enumerated under **Exhibit E**.

4.1.2 The scope of the Firm's Construction Phase Services shall include those services set forth herein and such other work as reasonably may be required in order for the Firm to complete the construction of the Project pursuant to the terms of the Contract Documents and the Project Construction Documents.

4.1.3 Firm shall perform all work in accordance with the Guaranteed Completion Dates as listed under Article 1.10, subject to adjustment as hereinafter provided.

4.1.4 The Firm shall secure all licenses, permits and governmental approvals necessary or required for the construction of the Project and the performance of the work. All fees associated with this procurement shall be the responsibility of the City.

4.1.5 The Firm shall provide all materials, equipment, supervision, inspection, testing, labor, tools and specialty items necessary to execute and complete the performance of the work unless otherwise specified as City's responsibility herein.

4.1.6 Notwithstanding any requirements herein for City's review, inspection or approval, the parties acknowledge and agree that the Firm shall be solely responsible and liable for the proper performance of the work as provided for herein.

4.1.7 Notices and Compliance with Law. The City is familiar with the zoning and land use restrictions applicable to the Project and has provided this information to the Firm. The Firm shall be responsible for giving all notices and for complying with all laws, ordinances, rules, regulations and lawful orders of any public authorities having jurisdiction over the Project with respect to the performance of the work and the construction of the Project including, without limitation, all building codes and regulations. The Guaranteed Maximum Price and Guaranteed Completion Dates are based upon the laws, ordinances and regulations, which are in effect on the date of this Agreement. Any changes in laws or codes thereafter that require additional work shall be the subject of a Change Order or Work Directive Change as hereinafter provided.

Truth-In-Negotiation Certification: The Firm certifies that the wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of the execution of this Agreement of which this Certificate is a part. The original price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the Agreement amount was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs and that such original Agreement adjustments shall be made within one (1) year following the end of the Agreement.

4.1.8 Utilities. Based upon reasonable inquiries with the known utility providers in the area, the Firm shall locate all known existing utilities above, upon, or under the Project site. The Firm shall contact the owner of all known Utilities to determine the location of and necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. The Firm shall schedule and coordinate its work around any such relocation or temporary service interruption. The Firm shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the work. Additional compensation may be due should existing utilities impacting the work be discovered, which are not identified by utility providers or shown on the Construction Documents.

4.1.9 Firm's Representative. The Firm designates Dale Burnham as its Representative whose address is P.O. Box 10667, St. Petersburg, FL 33733, to represent and act for the Firm ("Firm Representative"). All notices, determinations, instructions and other communications given to the Firm's Representative shall be binding upon the Firm. The City shall be entitled to rely upon the Firm's Representative authority as set forth within this Agreement.

4.1.10 Record Contract Documents. The Firm shall maintain at its primary local office one record set of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, Change Orders, Work Change Directives and Field Orders, as well as all written interpretations and clarifications issued by the City's Representative, in good order and annotated to show all changes made during construction. The record Contract Documents shall be continuously updated by the Firm throughout the prosecution of the work to accurately reflect all field changes that are made to adapt the work to field conditions, changes resulting from Change Orders, Work Change Directives and Field Orders, and all concealed and buried installations of piping, conduit and utility services which are installed by the Firm pursuant to the Contract Documents. A working copy of the Contract Documents and a permit set will be kept at the Project site. Upon completion of the work, the record Contract Documents, samples and shop drawings shall be delivered to the City's Representative by the Firm. In addition the Firm shall deliver to the City's Representative all warranties, maintenance manuals, training manuals and any other data related to the operation and maintenance of the facility in accordance with the Contract Documents.

4.1.11 Emergencies. In the event of an emergency affecting the safety or protection of persons or the work or property at the Project site or adjacent thereto, the Firm without special instruction or authorization from the City or the City's Representative, is obligated to act to prevent threatened damage, injury or loss. The Firm shall give the City's Representative prompt written notice after the occurrence of the emergency.

4.1.12 Use of Premises. The Firm shall confine all construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other lands and areas permitted by law, rights of way, permits and easements, and shall not unreasonably encumber the Project site with

construction equipment or other material or equipment. The Firm shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or any land or areas contiguous thereto, resulting from the performance of the work. The Firm shall notify the City as soon as the Firm is aware that it may be necessary for the work to affect adjacent property, without limitation. It is the City's responsibility to obtain the consent of adjacent property owners for such work.

4.1.13 Safety. The Firm shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

4.1.14 Project Meetings. The Firm shall at all times work closely with the City's Representative as designated herein and shall keep the City fully advised as to the status of the work on the Project. Prior to the commencement of Construction Phase Services, the Firm shall attend a pre-construction conference with the City and the City's Representative and others as appropriate to discuss the Project Schedule, procedures for handling shop drawings and other submittal, and for processing Applications for Payment, and to establish a working understanding among the parties as to the work. During the prosecution of the work, the Firm shall attend any and all meeting convened by the City or the City's Representative as directed by the City. The Firm may bring selected subcontractors and suppliers to such meetings when appropriate.

4.1.15 Sales Tax. With the exception of direct purchases by the City, all sales tax will be included in the compensation paid to the Firm by the City and shall be paid by the Firm.

4.1.16 City Direct Purchase Plan. Notwithstanding any provision in the Agreement to the contrary, the City may elect, at its sole and absolute discretion, to purchase materials and supplies for use in connection with the Project in accordance with the following procedure and provisions:

(a) The Firm shall provide the City with a written list of vendors and materials which the Firm proposes that the City purchase directly pursuant to the terms hereof;

(b) Upon review and approval of the list set forth in subsection (a) above by the City's Representative under Section 9.1, the City shall issue purchase orders for the materials on terms and to the vendors as set forth on said list;

(c) The City's purchase order(s) issued pursuant to the terms hereof shall state that the purchase of the identified materials is exempt from the payment of any state tax, and shall include a copy of the City's Sales Tax Consumer's Certificate of Exemption;

(d) In connection with any materials purchased by the City pursuant to the terms hereof, one or more deductive change orders to the Agreement shall be executed by the City and the Firm which deductive change order(s) shall be equal to the amount paid by the City for all materials purchased directly by the City. The applicable sales tax for these materials will become part of the City's Owner's Contingency pursuant to the terms hereof;

(e) Said deductive change order(s) shall constitute amendment(s) to the Agreement recognizing that the City has purchased the materials identified in the deductive change order(s) directly from the vendor and such materials are not included as part of the Agreement and the GMP for the Project shall be adjusted by the amount of the deductive change order(s) without adjustment to the Firm's Design-build Fee or General Conditions;

(f) Invoices for materials purchased pursuant to the terms hereof shall be sent directly to the City and the City shall directly pay the vendor or material man providing such materials, and a copy of each invoice shall be provided to the Firm for review and concurrence of payment applicability;

(g) Title to any materials purchased pursuant to the terms hereof shall vest in the City upon acceptance by the City and the Firm;

(h) The City shall bear all risk of loss for any materials purchased pursuant to the terms hereof commencing upon issuance of the purchase order by the City and terminating when the materials are accepted at the project site by the City and the Firm. Upon delivery of such equipment and material at the project site and prior to unloading or removal of packaging material, the Firm shall inspect the shipment and acknowledge receipt and acceptability of such shipment in writing to the City and the Firm shall immediately assume responsibility for the protection, risk of loss, storage, security, installation, performance, cleaning and maintenance in accordance with the terms of this Agreement. The Firm shall be further responsible to perform all work required to place each item of equipment in operating condition to the satisfaction of the City, including installation, coordinating the training, start-up and testing of the testing of the equipment as required under the terms of this Agreement;

(i) The City shall obtain such insurance as the City deems reasonably prudent, at the City's sole cost and expense, to insure the City for the full replacement costs of any materials purchased by the City pursuant to the terms hereof until such materials are accepted at the project site by the City and the Firm;

(j) The Firm shall remain responsible for the selection of vendors, the coordination of delivery dates, and the suitability of any materials for use in connection with the Project which are purchased pursuant to the terms hereof, during construction and for one year from the date of the Guaranteed Completion Date; provided, however, that the City shall remain responsible for payment to the applicable vendors;

4.1.17 Material Safety Data Sheet. If any chemicals, materials, or products containing toxic substances, as defined by Chapter 442, Florida Statutes, are contained in the products used on site or incorporated into the construction by the Firm or any of its subcontractors, the Firm shall provide to the City's Representative, a Material Safety Data Sheet at the time of each delivery or new use of a product.

4.1.18 Assignment. The Firm shall not assign, sublet or transfer any of the work except as otherwise provided for under the terms of this Agreement without the written consent of the City. Such consent does not release or relieve the Firm, as principal, from any of its obligations and liabilities under this Agreement.

4.1.19 The Firm shall comply with all laws, ordinances and regulations, Federal, State and City, applicable to the work.

If the Project involves E.P.A. Grant eligible work, the City and the Firm agree that the applicable provisions of 40 CFR, Part 35, including Appendix C-1, shall become a part of this Agreement.

If the Project involves work under other Federal or State Grantors or Approving Agencies, the CITY and the Firm shall review and approve the applicable required provisions or any other supplemental provisions as may be included in the Agreement.

The Firm shall assist the City in complying with all applicable terms and conditions of the government grants under Title XIII, Subchapter C, Part I of the Omnibus Budget Reconciliation Act of 1993 (26 U.S.C. 1391, et seq.) and under Title I of the Housing and Community Development Act of 1974 (PL 93-383), 24 CFR Part 570 *et seq.*

The Firm agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standard insofar as those acts apply to the performance of this Agreement.

4.1.20 The Firm shall not employ the services of any person or persons now in the employment of the City, or who are employed by the City during the term of this Agreement.

4.1.21 No person who is serving sentence in a penal or correctional institution shall be employed on work under this Agreement.

4.1.22 The Firm shall sign, as approved, any subcontracts submitted to the City and invoices submitted by subcontractors in connection with this Project under the terms of this Agreement.

4.1.23 The Firm warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Firm, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Firm, any fee, commission upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement, without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

4.1.24 Pursuant to Section 287.133, Florida Statutes, the following statement is incorporated into this Agreement and the Firm represents and warrants to the City that the Firm is not in violation of the following statutory provision: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, any may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

4.1.25 The Firm shall become familiar with and prepare for the normal weather conditions existing in Hillsborough County, Florida. Normal weather conditions are expected to impact the Work in numerous ways, including, but not limited to, delays during and after periods of rainfall, temporary flooding and ponding, wet ground, high winds and debris. The Firm's GMP and Construction Schedule, and any subsequent approved revisions thereto, shall sufficiently anticipate and include unfavorable weather.

4.1.26 Preservation of Property. The Firm shall preserve from damage all property along the line of the Work, or which is in the vicinity of or is in anywise affected by the Work, the removal or destruction of which is not called for by the Plans. This applies, but is not limited, to the public utilities, trees, lawn areas, building monuments, fences, pipe and underground structures, public streets (except natural wear and tear of streets resulting from legitimate use thereof by the Firm), and wherever such property is damaged due to the activities of the Firm, it shall be immediately restored to its original condition by the Firm and at his own expense. In case of failure on the part of the Firm to restore such property, or make good such damage or injury, the City may, upon forty-eight (48) hour written notice, proceed to repair, rebuild, or otherwise restore such property as may be deemed necessary, and the cost thereof will be deducted from any monies due or which may become due the Firm under this Agreement. Nothing in this clause shall prevent the Firm from receiving proper compensation for the removal, damage, or replacement of any public or private property not shown on the Plans, when this is made necessary by alteration of grade or alignment authorized by the City, provided that such property has not been damaged through fault of the Firm, his employees or agents.

4.1.27 Boundaries. The Firm shall confine his equipment, apparatus, the storage of materials, supplies and apparatus of his workmen to the limits indicated on the plans, by law, ordinances, permits or direction of the City.

4.1.28 Environmental Considerations. The Firm, in the performance of the work under this Firm, shall comply with all Local, State and Federal laws, statutes, ordinances, rules and regulations applicable to protection of the environment; and, in the event he violates any of the provisions of same, he shall be answerable to the Local, State and Federal agencies designated by law to protect the environment. In the event the City receives, from any of the environmental agencies, a citation which is occasioned by an act or omission of the Contractor or his subcontractor or any officers, employees or agents of either, it is understood and agreed that the Firm shall automatically become a party-respondent under said citation; and the City immediately shall notify the Firm and provide him with a copy of said citation. The Firm shall comply with the requirements of the citation and correct the offending condition(s) within the time stated in said citation and further shall be held fully responsible for all fines and/or penalties.

ARTICLE 5 COMPENSATION

5.1 Generally. The Firm's compensation for all work to be performed by the Firm under this Agreement shall consist of: (a) "Construction Management Fee" as described in Section 5.2 of this Agreement; and (b) the "Cost of Construction" as described in Section 5.4 of this Agreement which shall not exceed the "Guaranteed Maximum Price" for the construction of Project as described in Section 5.3 hereof. If the City elects or is required under this Agreement to make changes in the design or construction of the Project as hereinafter provided, then any increase in the Construction Management Fee, the Guaranteed Maximum Price or the Cost of Construction caused by such a change shall be incorporated in the Change Order or Work Directive Change as hereinafter provided.

5.2 Construction Management Fee. In consideration of the construction management services rendered by the Firm in connection with the Construction Phase Services, the City agrees to pay the Firm a fee in the amount of Sixty-five thousand one hundred thirty Dollars and No Cents (\$65,130.00), which fee shall be included as part of the GMP for the project as described in Sections 1.11 and 5.3 hereof.

5.3 Guaranteed Maximum Price. The Firm hereby guarantees that the Cost of Construction as described in Section 5.4 of this Agreement plus the Construction Management Fee shall not exceed the GMP stated in Article 1.11.

5.3.1 To the extent that the Cost of Construction plus the Construction Management Fee is less than the GMP, the savings shall be shared as follows:

City = 70%
Firm = 30%

5.3.2 100% of any unused portions of monies designated in the GMP as "Owner's Contingency" shall be credited back to the City.

5.3.3 The GMP contains certain allowances shown on page 1 of the GMP proposal. The City and the Firm agree that these allowances are maximum amounts to be paid for each of these items. Should the Firm realize that any of these individual allowances may be exceeded, the Firm will notify the City and the City's Design Team will be given adequate time to redesign any of these items to maintain the allowances.

5.4 Cost of Construction. The term "Cost of Construction" shall mean all costs necessarily incurred by the Firm in the proper performance of the work required to complete the Construction Phase Services. The Cost of Construction shall not include any costs relating to the design of the Project or the Design-build Fee. The Cost of Construction shall include the following items:

5.4.1 Wages of all workers directly employed by the Firm to perform the work, either at or off the Project site.

5.4.2 The Firm will be paid a fixed amount for General Conditions. This amount shall be Eighty-nine thousand eight hundred thirty Dollars and No Cents (\$89,830.00), for those General Conditions work items enumerated in the estimate.

5.4.3 Costs paid or incurred by the Firm for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pension, provided that such costs are based on wages and salaries included in the Cost of Construction.

5.4.4 Payments made by the Firm to subcontractors in accordance with the requirements of their respective subcontracts.

5.4.5. Payments made by the Firm to consultants retained by the Firm with respect to the Project, in accordance with the requirements of their respective consultant contracts.

5.4.6 Costs, including transportation, of materials and equipment incorporated in the Project.

5.4.7 Costs of materials described in the preceding Subsection 5.4.6 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the City at the completion of the work or, at the City's

option, shall be sold by the Firm; net amounts realized, if any, from such sales shall be credited to the City as a deduction from the Cost of the Construction.

5.4.8 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by or for the Firm in the performance of the work required hereunder. Cost for items supplied by the Firm shall be documented or invoiced to the reasonable satisfaction of the City.

5.4.9 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by or for the Firm, whether rented from the Firm or others, and costs of transportation, installation, repairs and replacements, dismantling and removal thereof specifically for the purpose of constructing the Project. Rates of equipment rented from the Firm shall be at actual costs paid, as evidenced by invoices to the Firm.

5.4.10 Cost of removal of debris from the site.

5.4.11 Reproduction costs.

5.4.12 That portion of the reasonable travel and subsistence expenses of the Firm's personnel incurred while traveling in discharge of duties connected with the work outside the Tampa Metropolitan Area and with the City's prior consent.

5.4.13 That portion directly attributable to this Contract of premiums for insurance and bonds.

5.4.14 All sales, use or similar taxes imposed by a governmental authority which are related to the Project.

5.4.15 Fees of testing laboratories for tests required by the Contract Documents, except as specifically described in the Agreement or attachments to this Agreement.

5.4.16 Deposits lost for causes other than the Firm's negligence or failure to fulfill a specific responsibility to the City set forth in this Agreement.

5.4.17 Other costs incurred in the performance of the work if, and to the extent, approved in advance and in writing by the City.

5.4.18 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property; or in repairing or correcting damaged or nonconforming work executed by the Firm or the Firm's subcontractors consultants or suppliers, but only to the extent that the cost of repair or correction is not recovered by the Firm from insurance, subcontractors, other consultants or suppliers.

5.4.19 Fees and assessments for the building permit and for other permits, licenses and inspections which are required to construct the Project.

5.4.20 If, subsequent to final payment and at the City's request, the Firm incurs costs described in Section 5.4 and not excluded by Section 5.5 to correct defective or nonconforming work,

the City shall reimburse the Firm such costs on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

5.5 Costs Excluded. The Cost of Construction shall not include:

5.5.1 Expenses of the Firm's principal office and officers other than the site office except as specifically provided in Section 5.4.

5.5.2 Overhead and general expenses, except as may be expressly included in Section 5.4.

5.5.3 The Firm's capital expenses, including interest on the Firm's capital employed for the work.

5.5.4 Threshold inspections.

5.5.5 Testing specifically excluded from and/or in addition to that included in the Firm's GMP Proposal.

5.6 Cash Discounts. Cash discounts obtained on payments made by the Firm shall accrue to the City if (a) before making the payment, the Firm included them in an Application for Payment and received payment therefor from the City, or (b) the City has deposited funds with the Firm with which to make payments; otherwise, cash discounts shall accrue to the Firm. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the City and the Firm shall make provisions so that they can be secured. Amounts which accrue to the City in accordance with the provisions of this section shall be credited to the City as a deduction from the Cost of Construction.

5.7 Accounting Records. The Firm shall keep full and detailed accounts and exercise such controls as may be reasonably necessary for proper financial management under this Agreement. The City, City's accountants and state and federal governmental agencies (if applicable) shall be afforded reasonable access to the Firm's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Firm shall preserve these for a minimum period of three (3) years after final payment, or for such longer period as may be required by law.

With respect to all matters covered by this Agreement, records will be made available for examination, audit, inspection, or copying purposes at any time during normal business hours at a location within Hillsborough County, Florida as often as the City, HUD, representatives of the Comptroller General of the United States or other federal agency may reasonably require. The Firm will permit same to be examined and excerpts or transcriptions made or duplicated from such records, and audits made of all contracts, invoices, materials, records of personnel and of employment and other data relating to all matters covered by this Agreement. The City's right of inspection and audit shall obtain likewise with reference to any audits made by any other agency, whether local, state or federal. The Firm shall retain all records and supporting documentation applicable to this Agreement for five (5) years from the date of submission of the annual performance report to HUD. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be

retained until completion of the action and resolution of all issues which arise from it, or the end of the required period, whichever is later.

ARTICLE 6 PAYMENT

6.1 Payment of Fee. Subject to the withholding requirements of this Agreement and the rights of the City hereunder, the Construction Management Fee shall be paid by the City to the Firm in accordance with the following schedule:

6.1.1 The Construction Management Fee shall be paid monthly during the Construction Phase in equal payments prorated over the period of construction. No retainage shall be held on the Construction Management Fee.

6.1.2 The Firm and the City agree and acknowledge that ten percent (10%) of the Construction Management Fee is paid by the City to the Firm as separate consideration for the indemnification of the City.

6.2 Payment of the Cost of Construction. Subject to the withholding requirements of this Agreement (excluding retainage) and the rights of the City hereunder, the City shall pay the Cost of Construction in the following manner and under the following conditions:

6.2.1 As a condition precedent to payment, the Firm shall furnish to the City such schedules of quantities and costs, progress schedules, reports, invoices, delivery tickets, estimates, records, or other data as the City may reasonably request concerning work performed or to be performed and the materials furnished under the Agreement.

6.2.2 The General Conditions Fee shall be paid in equal payments prorated over the period of construction and will be billed with each application for payment throughout the anticipated duration of the project. No retainage shall be held on the General Conditions Fee.

6.2.3 Subject to the City's retainage rights and other rights provided elsewhere, the Firm shall pay no later than the 5th business day following payment to the Firm, (a) for all transportation and utility services, (b) for all materials, tools, and equipment delivered at the site of the Project, (c) to each of its subcontractors, the respective amounts allowed the Firm on account of the work performed by its subcontractors, to the extent of each subcontractor's interest therein; and (d) all other costs of construction as described in Article 4 hereof for which payment has been received by the Firm. The Firm shall provide the City on a timely basis, but in no case more than 30 days, with proof of such payments and releases upon request by the City. Such proof shall accompany requests for partial payment as described in paragraph 6.2.4.

6.2.4 On or about the first of each month, the Firm shall make and certify an invoice, on forms approved by the City, for the work done, and may apply for partial payment therefor. The Firm shall revise the invoices as the City may reasonably direct. When satisfactory progress has been made and it has been shown that the Cost of Construction of the work completed since the last payment exceeds one percent (1%) of the total GMP, the City shall issue a certificate in the amount of the Cost of Construction it reasonably determines is due under the Contract Documents. The City shall then issue a voucher to the Firm in accordance with the following schedule:

(a) In the amount of ninety percent (90%) of the Cost of Construction of the work completed as certified until construction is fifty (50%) complete.

(b) When the dollar value, as reasonably determined by the City, of satisfactorily completed work in place is greater than fifty percent (50%) of the GMP, vouchers for partial payment shall be issued by the City to the Firm in the amount of one hundred percent (100%) of the Cost of Construction of the work, above 50% completed as certified for that payment period.

(c) If the Firm has performed satisfactorily and the work is substantially complete (operational or beneficial occupancy), the withheld amount shall be reduced, to an amount equal to 200% of the cost of completing the work required by this Agreement which cost shall be reasonably estimated by the City.

(d) In addition to the Conditions set forth in Clauses (a)., (b)., and (c). above, payments shall always be less any sums that may be retained or deducted by the City under the terms of any of the Agreement.

(e) Payment on invoices submitted on or about the first of the month shall be paid on or about the 25th of the month.

(f) The delivered cost of equipment and non-perishable materials suitably stored at the site of the Project (as well as those stored off-site in a bonded warehouse or such other location as may be required, and/or approved, by the City and only if expressly approved in writing by the City's Representatives) and tested for adequacy (excluding material testing) may be included by the Firm in its application for partial payment; provided, however, that the Firm shall furnish evidence satisfactory to the City that the Firm is the unconditional owner and in possession of such materials or equipment. Subject to the provisions noted above with respect to retainage reduction, the amount to be paid will be 90 percent of the invoice cost to the Firm which cost shall be supported by receipted bills. Such payment shall not relieve the Firm from full responsibility for the completion of the work and for protection of such materials and equipment until incorporated in the Project in a permanent manner as required by the Agreement.

(g) Prior to payment to the Firm hereunder, the City may request and if requested, the Firm shall deliver to the City a written, verified statement on forms acceptable to the City showing in detail all amounts then due and unpaid by such Firm to all subcontractors, sub-consultants, laborers, workmen, and mechanics, employed by it under the Agreement for the performance of the Project, for daily or weekly wages, or to other persons for materials, equipment, or supplies delivered at the Project site during the period covered by the payment under consideration, including applicable lien releases.

6.2.5 The City may withhold from the Firm as much as any approved payments to it as may, in the reasonable opinion of the City, be necessary to secure: (a) claims of any persons supplying labor or materials to the Firm then due and unpaid; (b) loss due to defective work not remedied; or (c) liability, damage, or loss due to injury to persons or damages to the Project or property of other contractors, subcontractors, or others, caused by the act or neglect to act of the Firm or of any of its subcontractors. The City shall have the right, to apply any such amounts so withheld in such manner as the City may reasonably deem proper to satisfy such claims or to secure such protection. Such application of such money shall be deemed payments for the account of the Firm.

6.2.6 Upon determination of satisfactory completion of the work (or portion thereof) under this Agreement by the City, the Firm shall prepare the final invoice showing the total Cost of Construction of the completed work and submit it to the City for review. This invoice shall be prepared within 30 days after the date of substantial completion or as soon thereafter as the necessary measurements and computations can be made. All prior certificates and estimates, being approximate only, are subject to correction in the final invoice and payment.

6.2.7 When the final invoice (or a portion thereof) has been approved and certified by the City, it shall be promptly submitted to the Mayor and City Council. The final certificate shall state that the work has been completed and that the amount is based on the final invoice remaining due to the Firm. The City shall then accept the work as fully completed and shall, not later than 30 days after the final acceptance of the Project, pay the Firm the entire amount so found due thereunder after deduction of all previous payments and all percentages and amounts to be kept and retained under provisions of this Agreement; provided, however, the City and Firm hereby agree that as a condition precedent to receiving final payment from the City, the Firm shall submit to the City: (a) a sworn affidavit executed by the Firm which contains a complete list of all unpaid bills for labor, services, materials, and subcontractors and any existing or pending suits relating to the Project (if any); and (b) a consent of surety that issued the Performance Bond and Payment Bond for the Project. If a claim should remain unsatisfied after all payments are made, the Firm shall refund to the City all monies which the City may be compelled to pay in discharging such claim(s) including incidental costs and fees, including without limitation, attorneys' fees and costs whether incurred at trial or on appeal. The City shall not make any payments in discharging such claims, and shall not seek a refund for any such monies that the City may be compelled to pay, without providing to the Firm a reasonable opportunity to discharge such claims itself.

6.2.8 The acceptance by the Firm, or by anyone claiming by or through it, of the final payment shall operate as and shall be a release to the City and every officer and agent thereof from any and all claims and liability to the Firm for anything done or furnished in connection with the work or Project, except those expressly identified in writing by the Firm at the time it submits its final payment application to the City. No payment, however, final or otherwise, shall operate to release the Firm or its sureties from any obligations under this Agreement or a Performance Bond and a Payment Bond.

6.2.9 For clarification, the term, "final acceptance" shall mean acceptance of the work as evidenced by an official resolution of the City. Such acceptance shall be deemed to have taken place only if and when an approving resolution has been adopted by the City Council. The final acceptance shall be signed only after the City has assured itself by tests, inspection, or otherwise, that all of the provisions of the Agreement have been carried out to its satisfaction.

ARTICLE 7 BOND

7.1 Upon execution of this Agreement, the Firm shall deliver to the City a fully executed Public Construction Bond, on the form attached hereto as **Exhibit A**, in an amount equal to the GMP. The Public Construction Bond shall be issued by sureties acceptable to the City, whose acceptance shall not be unreasonably withheld. The sureties for such bond shall be duly authorized to do business in the State of Florida, and the bonds shall be issued or countersigned by a local resident producing agents for such sureties who are a resident of the State of Florida, regularly commissioned and licensed in said state; and satisfactory evidence of the authority of the person or persons executing such bonds to execute the bonds shall be submitted with the bonds. The Public Construction Bond shall serve as security for

the faithful performance of this Agreement, including the maintenance and guarantee provisions, and for the payment of all persons performing labor and furnishing materials in connection with the Agreement. The premiums for Public Construction Bond shall be reimbursable as Costs of the Construction. All surety companies shall have a rating of not less than B+ Class VI as evaluated in the most recently circulated Best's Key Rating Guide Property-Liability. Pursuant to Section 255.05, Florida Statutes, the Firm shall record both the Public Construction Bond in the Public Records of Hillsborough County, Florida, before commencing any work under this Agreement on the Project.

7.2 If, during the term of this Agreement, the City shall become dissatisfied with the surety for the Public Construction Bond due to such surety's failure to maintain the minimum ranking noted in Section 7.1 above, the Firm shall, within fifteen (15) days after written notice from the City, obtain and submit a replacement bond from another surety reasonably acceptable to the City and meeting the requirements as set forth herein. The form of such replacement bond shall be identical to the bond approved by the City as set forth in **Exhibit A** attached hereto and made a part hereof. Any such replacement bond shall be in an amount reasonably acceptable to the City, but in no event more than the bond it is replacing. All premiums associated with any such replacement bond shall be paid by the Firm and shall be recoverable as part of the Cost of Construction for which a change will be issued to adjust the GMP. The Firm shall not be entitled to any further progress payments under Article 6 until such replacement bond has been provided to the City. Any such replacement bond shall also be recorded in the Public Records of Hillsborough County, Florida.

7.3 In no event shall the Cost of Construction together with the Construction Management Fee exceed the GMP, except as adjusted by Change Orders.

ARTICLE 8 **THE FIRM'S REPRESENTATIONS,
COVENANTS AND WARRANTIES**

8.1 The Firm warrants to the City that materials and equipment furnished under this Agreement will be of good quality and new, unless otherwise required or permitted by the Contract Documents, that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform with the requirements of the Contract Documents.

8.2 Further, the Firm warrants the work against any defects in workmanship or materials for a period of one (1) year following the date of the Guaranteed Completion Date of the Project, or portion thereof, or for such longer periods of time as may be set forth with respect to certain warranties required by this Agreement. Under this warranty, the Firm hereby agrees to make good, without delay at its own expense, any failure of any part of the work due to faulty materials or manufacture, construction, or installation, or the failure of any equipment to perform in accordance with the requirements of the Contract Documents, and further shall make good any damage to any part of the Project caused by such failure. In addition, all warranties in excess of one year, either as required by the Contract Documents or as otherwise provided, will be transferred to the City by the Firm.

8.3 The Firm shall secure required certificates of inspection, testing or approval and deliver them to the City.

8.4 The Firm shall assign all written equipment and vendor warranties and equipment manuals and deliver them to the City at the time of the Guaranteed Completion date.

8.5 The Firm shall direct the checkout of utilities and operations of systems and equipment for readiness, and assists in their initial start-up and testing.

8.6 The Firm agrees that the Public Construction Bond required hereunder shall fully cover all warranties contained herein and that all warranties, express or implied, inure to the benefit of the City and are enforceable by the City.

8.7 No Reliance. The Firm acknowledges, understands and agrees that the Project Construction Documents, and each component thereof, do not constitute technical specifications and do not in any way reflect all of the design, permitting, regulatory and construction requirements of the Project.

8.8 Assumption of Risks by Firm. The Firm has entered into this Agreement with the full understanding and knowledge that there is no guarantee that a Notice to Proceed will be issued by the City. The Firm agrees that the City shall not be liable for any damages associated with the City's withholding of the Notice to Proceed.

8.9 Except as otherwise provided in this Agreement, the Firm shall have a duty to anticipate and provide adequate contingencies for risks associated with the Work for the Project. The Firm shall take into consideration and factor into its Construction Schedule and GMP, all site conditions and difficulties involved in the completion of the Work, the variations in permitting time frames, and the time frames available to City for reviewing deliverables, schedules, and payment invoices.

ARTICLE 9 THE CITY'S REPRESENTATIVE

9.1 City's Representative. The "City's Representative" for purposes of this Agreement shall be the Director of the Contract Administration Department whose address is 306 E. Jackson Street, Tampa, Florida 33602. The Director of the Contract Administration Department may designate other persons to carry out his duties hereunder. Such designations shall be in writing in accordance with Article 25 of this Agreement.

9.1.1 The Director of the Contract Administration Department or his representative, in addition to those matters elsewhere herein expressly made subject to his determination, direction, or approval, shall have the power, subject to such express provisions and limitations herein contained as are not in conflict herewith, and subject to review by the Mayor and City Council:

- (a) To monitor the work provided for under this Agreement; and
- (b) To determine how the work of this Project shall be coordinated with the work of other contractors engaged simultaneously at this Project; and
- (c) To make minor changes in the work as he deems necessary, provided such changes do not result in an increase in the time or cost to the City or to the Firm.

The power of the City's Representative shall not be limited to the foregoing enumeration, for it is the intent of this Agreement that all of the work shall be subject to his determinations and approval, except where the determination or approval of someone other than the City's Representative is expressly called for herein and except as subject to review by the Mayor and City Council.

The City's Representative or his designee in addition to those matters previously stated shall also have the power:

(a) To review any and all questions in relation to the Contract Documents (including this Agreement) and its performance, except as herein otherwise specifically provided; and his determination upon such review shall be final and conclusive upon the Firm, subject to the Firm's right to appeal any such determination in accordance with the procedures set forth in Article 16.

(b) With the approval of the Mayor and City Council, to authorize modifications or changes in the Contract so as to require: (1) the performance of extra work, or (2) the omission of work whenever he deems it in the interest of the City to do so, or both.

(c) To suspend the whole or any part of the work provided for under this Agreement whenever, in his judgment, such suspension is required: (a) in the interest of the City generally; or (b) to coordinate the work of the various contractors engaged on this Project, without compensation to the Firm for such suspension other than extending the time for the completion of the Project, as much as it may have been, in the opinion of the City, delayed by such suspension unless otherwise provided for herein. In the event the suspension is more than fourteen (14) days, the Firm will be entitled to said extension of time along with demobilization and remobilization expenses, and amounts due for materials ordered, only.

(d) If, before the final acceptance of all the work contemplated herein, it shall be deemed necessary to take over, use, occupy, or operate any part of the completed or partly completed work, subject to receipt of approvals from all affected insurance companies for the City and the Firm, the Director of the Department shall have the right to do so; and the Firm shall not, in any way, interfere with or object to the use, occupation, or operation of such work by the City after receipt of notice in writing from the City that such work or part thereof will be used by the City on and after the date specified in such notice. Such taking over, use, occupancy or operation of any part of the completed or partially completed work shall not constitute final acceptance or approval of any such part of the work nor shall it constitute substantial completion of the work for purposes of this Agreement unless the requirements of Article 20 are otherwise satisfied. Nothing herein shall be deemed a waiver of the Firm's right to an extension of time or an increase in its compensation hereunder if such early occupancy or use by the City interferes with or delays the Firm's work hereunder.

9.2 The City shall not, nor shall any department, officer, agent, or employee thereof, be bound, precluded, or stopped by any determination, decision, acceptance, return, certificate, or payment made or given under or in connection with the Contract by any officer, agent or employee of the City at any time either before or after final completion and acceptance of the work any payment thereof: (a) from showing the true and correct classification, amount, quality, or character of the work done or that any determination, decision, acceptance, return certificate or payment is untrue, incorrect or improperly made in any particular, or that the Project or any part thereof does not in fact conform to the requirements of the Contract, and (b) from demanding and recovering from the Firm any overpayments made to it or such damages as the City may sustain by reason of the Firm's failure to comply with the requirements of the Contract, or both.

9.3 Neither the inspection, nor any order, measurements or certificate of the City or its employees, officers, or agents, nor any order of the City for payment of money, nor payments for or acceptance of the whole or any part of the Project, nor any extension of time, nor any changes in the

Contract, or any possession of the Project by the City shall operate as a waiver of any provisions of the Contract; nor shall any power herein provided nor any waiver of any breach of the Contract be held as a waiver of any other subsequent breach.

Any remedy provided in this Agreement shall be taken and construed as cumulative, namely, in addition to each and every other suit, action, or legal proceeding. Either party shall be entitled as a right to an injunction against any breach of the provisions of the Agreement.

9.4 Payments. The City shall make payments to the Firm in accordance with Article 6 herein.

9.5 Evidence of Funding. Prior to commencement of work by the Firm, the City shall deliver to the Firm a certified copy of a resolution adopted by City Council: (a) authorizing this Agreement or such amendments to this Agreement as may be required prior to commencement of Construction Services, and (b) identifying the funds for payment of the Construction Management Fee and the Costs of Construction.

Material Testing. The Firm shall furnish material testing, inspections and reports as required by law or the Contract Documents, the cost of which is included in the GMP. Provided, however, if any re-testing of a material is required due to such material failing the initial testing, such re-testing shall be at the Firm's expense, which expense may be included as part of the Cost of Construction.

9.6 Budgeted Appropriations. The City is subject to Section 166.241, Florida Statutes, and is not authorized to contract for expenditures in any fiscal year except in pursuance of budgeted appropriations. With respect to this Agreement, the City has budgeted and appropriated sufficient monies to fund the City's obligation under this Agreement, however, all funding under this Agreement for subsequent years is subject to the availability of funds, and payment of any and all funds pursuant to this Agreement shall be made solely for costs incurred for the Work.

9.6 Notification of Faults or Defect. If the City observes or otherwise becomes aware of a fault or defect in the work or nonconformity with the design or Contract Documents, the City shall give prompt written notice thereof to the Firm.

9.7 Timely Provision of Information and Decisions. The City shall furnish required information and services and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the design and construction.

9.8 Communication with Contractors. The City shall communicate with the Firm's consultants and subcontractors only through the Firm.

9.9 Legal Description and Land Survey. Prior to commencement of the Construction Phase Services, the City shall provide the Firm with a survey of the Project site. The Firm shall be entitled to rely upon the accuracy and completeness of the survey.

9.10 Hazardous Material.

9.10.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing

handling, disposal and/or clean-up. The Firm shall not be obligated to commence or continue work until any known or suspected Hazardous Material discovered at the Project site has been removed, rendered or determined to be harmless by the City as certified by an independent testing laboratory and approved by the appropriate government agency.

9.10.2 If after the commencement of the work, a known or suspected Hazardous Material is discovered at the Project site, the Firm shall be entitled to immediately stop work in the affected area and shall report the condition to the City and, if required, the government agency with jurisdiction.

9.10.3 The Firm shall not be required to perform any work relating to or in the area of known or suspected Hazardous Material without written mutual agreement of the Firm and the City.

9.10.4 The City shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures shall be the sole responsibility of the City, and shall be performed in a manner minimizing any adverse effect upon the work of the Firm. The Firm shall resume work in the area affected by any Hazardous Material only upon written agreement between the parties after the Hazardous Material has been removed or rendered harmless.

9.10.5 If the Firm incurs additional costs and/or is delayed due to the presence of Hazardous Material, the Firm and the City agree to adjust the Contract time and/or compensation by a change order or amendment to this Agreement.

ARTICLE 10 CONTRACT TIME

10.1 The period for performance shall be in accordance with Section 1.10.

10.2 The Firm must commence the Construction within thirty (30) days subsequent of the date of the "Notice to Proceed" by the City or receipt of Building Permit, whichever comes later, unless otherwise provided by the City. Time being of the essence of this Contract, the Firm shall thereafter prosecute the work diligently, using such means and methods as will secure its substantial completion not later than the Guaranteed Completion Date or on the dates to which Guaranteed Completion Date may be extended as provided herein.

10.3 Extension of Time. If such an application is made, the Firm shall be entitled to an extension of time for delay in completion of the services should the Firm be delayed in the commencement, prosecution of completion of any part of said services by any act or delay of the City, or by acts or omissions of other contractors on this Project, or by a riot, insurrection, war, pestilence, acts of public authorities, fire, lightning, hurricanes, earthquakes, tornadoes, floods, extremely abnormal and excessive inclement weather as indicated by the records of the local weather bureau for a five (5) year period preceding the date of the Agreement, or by strikes, or other causes, which causes of delay mentioned in this Agreement, in the reasonable opinion of the City, are beyond the expectation and control of the Firm.

The Firm shall, however, be entitled to an extension of time for such causes only for the number of days of delay which the City may reasonably determine to be due solely to the extent such causes and only to the extent that such occurrences actually delay the completion of the Project.

The determination made by the City on an application for the extension of time shall be subject to the Firm's right to dispute extensions of time granted by the City pursuant to Article 16 hereof.

Delays caused by failure of the Firm's material men, manufacturers, and dealers to furnish approved working drawing, materials, fixtures, equipment, appliances, or other fittings on time or failure of subcontractors to perform their services shall not constitute a basis of extension of time.

10.4 Liquidated Damages. It is mutually agreed between the parties that time is the essence of this Agreement and that there will be on the part of the City considerable monetary damage in the event the Firm should fail to achieve Substantial Completion of the work by the Guaranteed Completion Date, as said date may be adjusted pursuant to the terms hereof. In such event, the amount of liquidated damages per day shall be \$545/day. This amount shall, in no event, be considered as a penalty or otherwise than as the liquidated and adjusted damages to the City because of the delay; and the Firm and its Surety agree that the stated sum per day for each such day of delay shall be deducted and retained out of the monies which may become due hereunder and, if not so deductible, the Firm and its Surety shall be liable therefor.

ARTICLE 11 CHANGES IN THE WORK

11.1 General. The City shall have the right at any time during the progress of the work to increase or decrease the scope of work. Upon being notified of a change, the Firm shall submit to the City within fifteen (15) calendar days an itemized estimate of any costs and/or time of performance increases or savings it foresees as the result of the requested change.

11.2 Change Orders/Written Directive Change. A "Change Order", or "Work Directive Change" to this Agreement, shall be issued and executed promptly after an agreement is reached between the Firm and the City concerning the requested change. The Firm shall promptly perform changes authorized by a duly executed Change Order or Work Directive Change. The Contract time and compensation shall be adjusted in the Change Order or Work Directive Change in the manner as the City and the Firm shall mutually agree. If the City and the Firm are unable to mutually agree on the adjustment to the Contract time and/or compensation, it shall be adjusted pursuant to the procedures contained in Sections 11.3, 11.4 and 11.5 below.

11.3 Additional Fee & General Condition Cost. The firm shall be allowed a mark-up on all changes in the scope of the work. This mark-up shall include a cost of 12% for additional General Condition cost, which shall include all related insurance and bond costs, and a Fee not to exceed the percentage rate of the Construction Management Fee indicated in Article 5.2 as divided by the GMP as indicated in Article 1.11.

11.4 Disagreement as to Change Orders or Work Change Directive. If the City and the Firm are unable to agree on a Change Order or Work Directive Change for the requested change, the Firm shall, nevertheless, promptly perform the change as directed by the City.

11.5 Computation of Changes to GMP. In the event the City and the Firm are unable to mutually agree on a change to the Contract time and/or compensation resulting from a change, the amount of the adjustment shall be as reasonably directed by the City. The City shall issue a Change Order or Work Directive Change based upon such determination and the Firm shall be entitled to payment in at least the amount so determined by the City. If the Firm disagrees with the City's

adjustment determination, the Firm may make a claim for the difference pursuant to the procedures set forth in Article 16.

11.6 Verification of the Firm's Costs. The City shall have the right to conduct a review of the Firm's books and records to verify the accuracy of any claim submitted to the City by the Firm with respect to any Change Order or Work Directive Change.

11.7 Minor Changes in Work. The City's Representative shall have authority to order minor changes in the work not involving an adjustment to the Contract compensation and/or time and not inconsistent with the intent of the Contract Documents. Such changes may be effected by "Field Order" or by other written order. Such changes shall be binding upon the Firm.

11.8 Concealed Conditions. If concealed or unknown conditions (including, without limitation, Hazardous Materials), that affect the performance of the work and vary from those indicated in plans, drawings, surveys, reports or any other documents provided by the City, are encountered below ground or in an existing structure other than the work, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in work of the character provided for in this Project, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed. The Contract time and/or compensation shall be equitably adjusted for such concealed or unknown conditions by Change Order or Work Directive Change. Notwithstanding the forgoing, the Firm assumes the risk for all costs associated with concealed conditions which are foreseeable through the exercise of due diligence. It shall be the obligation of the Firm to fully investigate the Project site and provide sufficient contingency amounts for Project site conditions which are foreseeable and which may differ from those suggested by inspections, reports or other information provided by the City.

11.9 Disputed Work. If the Firm is of the opinion that any services required, necessitated, or ordered violates the terms and provisions of the Agreement, it must promptly notify the City, in writing, of its contentions with respect thereto and request a final determination thereof. If the City determines that the service in question is a service covered in the Agreement and not an extra service or that the service complained of is proper and that no adjustment in the Contract time or compensation is required, it shall direct the Firm to proceed, and the Firm shall promptly comply. In order, however, to reserve its right to claim compensation or time for such service, the Firm must within fifteen (15) calendar days after receiving notice of the City's determination and direction, notify the City in writing that the service is being performed or that the determination and direction is being complied with under protest. Failure of the Firm to notify shall be deemed as a waiver of claim for extra compensation and time.

ARTICLE 12 INSPECTION/MONITORING/TESTING

12.1 The City's Access to Work. The City and its respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project (including, without limitation, the Florida Department of Environmental Protection, the U.S. Environmental Protection Agency and the U.S. Department of Labor) shall have reasonable access at all times to the work contemplated in the Contract Document, whether the work is being performed on or off Project site, for their observation, inspection and testing. The Firm shall provide reasonably safe conditions for such access. The Firm shall provide the City with timely notice of readiness of the work for all required inspections, tests or approvals.

12.2 Responsibility for Inspections, Tests or Approvals. If the Contract Documents, or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project require any portion of the work to be specifically inspected, tested or approved, such inspection, testing and approval shall constitute a condition precedent to the right of the Firm to receive the money therefore until the work has been inspected, tested or approved. The Firm shall cooperate with and assist the City in securing the required certificates of inspection, testing or approval. All inspections, tests or approvals coordinated by the Firm shall be performed in a manner and by organizations engaged by the Firm and reasonably acceptable to the City. The City is solely responsible for all threshold inspections.

12.3 Covered Work. If any work that is to be inspected, tested or approved is covered without concurrence from the City, such work must, if requested by the City, be uncovered for observation. Such uncovering shall be at the Firm's expense unless the Firm has given the City timely notice of the Firm's intention to cover same and the City has not acted with reasonable promptness to respond to such notice. If any work is covered contrary to written directions from the City, such work must, if required by the City, be uncovered for the City's observation and be replaced at the Firm's sole expense.

12.4 Inspecting Covered Work. If the City considers it necessary or advisable that any covered work performed by the Firm be observed by the City or inspected or tested by others, the Firm, at the written request of the City, shall uncover, expose or otherwise make available for observation, inspection or tests, as the City may reasonably require, that portion of the work in question, furnishing all necessary labor, material and equipment. If it is found that such work is defective, the Firm shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection, testing, correction of the defect and of satisfactory reconstruction thereof. If, however, such work is not found to be defective, the Contract time and compensation shall be adjusted by Change Order or Work Directive Change as appropriate due to such uncovering, exposure, observation, inspection, testing and reconstruction.

ARTICLE 13 DEFECTIVE WORK

Any Work performed by the Firm not conforming to the requirements of the Contract Documents shall be deemed defective work. If required by the City, the Firm shall as directed by the City, either correct all defective work whether or not fabricated, installed or completed, or, if the defective work has been rejected by the City, remove it from the site and replace it with non-defective work, without increase to the GMP.

ARTICLE 14 PROTECTION

14.1 During performance and until substantial completion, the Firm shall be under an absolute obligation to protect the finished and unfinished Project against any damage, loss, or injury. The Firm shall take proper precaution to protect the finished portion of the Project from loss or damage, pending substantial completion of all the work included in the entire Agreement. Such loss or damage shall be at the risk of and borne by the Firm, whether arising from acts or omissions of the Firm or others, excluding the acts or omissions of the City and anyone for whom the City is liable. In the event of any such loss or damage, the Firm shall forthwith repair, replace, and make good the Work without extension of time therefore, except as may be otherwise provided herein.

14.2 The provisions of this section shall not be deemed to create any new right of action in favor of third parties against the Firm or the City.

ARTICLE 15 EQUAL EMPLOYMENT

During the performance of this Agreement or any related Work Order, the Firm shall:

15.1 Not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, handicap, or national origin. The Firm shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, handicap, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Firm shall post in conspicuous places, available to employees and applicants for employment; notices to be provided setting forth the provisions of this nondiscrimination clause.

15.2 In all solicitations or advertisements for employees placed by or on behalf of the Firm, it must state that all qualified applicants will receive considerations for employment without regard to race, color, religion, age, sex, handicap, or national origin.

ARTICLE 16 CLAIMS AND DISPUTES

16.1 The City and the Firm shall attempt to mutually resolve any claims or disputes arising out of or related to this Agreement and the performance of the work hereunder. All claims or disputes arising out of or related to this Agreement or the performance of work hereunder must be made in writing by the complaining party within the time frame established in this Agreement for such claims or disputes, and delivered in accordance with the notice provisions of this Agreement. If no such time frame is established in this Agreement, notice from the complaining party shall be made in writing within thirty (30) calendar days of the first occurrence of the event giving rise to the claim or dispute. If either party fails to give written notice of a claim or dispute as required herein, such party shall be deemed to have waived the claim or dispute; provided, however, if the claim or dispute is of a continuing nature and written notice is given while the claim or disputed matter is still occurring but after the time period required in this Agreement, the party shall be deemed to have waived the claim or dispute only as to those matters which accrued prior to the date such written notice is actually given.

16.2 In the event that any dispute or claim arising out of or related to this Agreement or the performance of work hereunder cannot be amicably resolved by the parties, then such dispute(s) shall be subject to litigation in a court of competent jurisdiction; provided, however, the parties may, by mutual written agreement, first submit such dispute(s) to non-binding mediation or other mutually agreed upon dispute resolution procedures.

16.3 In connection with any litigation arising out of or related to this Agreement or any work performed hereunder, the venue for such litigation shall be Hillsborough County, Florida. Further, the prevailing party in any such litigation shall be entitled to recover from the non-prevailing party the prevailing party's reasonable attorney's fees and costs, including those incurred on appeal.

16.4 In the event of any conflicts between this Agreement and any Attachment incorporated herein by reference, the terms of this Agreement shall prevail.

ARTICLE 17 CANCELLATION OF AGREEMENT

Except as otherwise provided herein, this Agreement may be cancelled by either party for convenience in accordance with the provisions in 24 CFR § 85.44. Either party will be required to provide thirty (30) days advance written notice to the other at its address as herein specified. Either party will be required to provide thirty (30) days advance written notice to the other at its address as herein specified. In the event the Agreement is cancelled, the Firm, shall deliver all original sketches, tracings, drawings, computations, details, design calculations, specifications and other documents and plans that result from the Firm's services under this Agreement. The aforementioned original sketches, tracings, drawings, computations, details, design calculations, specifications and other documents and plans shall be without restriction on future use by the City.

ARTICLE 18 DEFAULT AND TERMINATION

18.1 It is mutually agreed that the following shall constitute a default by the Firm under this Contract, subject to the notice and cure provisions herein:

(a) In accordance with 24 CFR 85.43, a default shall consist of any use of Grant Funds for a purpose other than as authorized by this Agreement, compliance with any provision in all Articles herein, any material breach of the Agreement, failure to comply with the audit requirements as provided herein, or failure to expend Grant Funds in a timely or proper manner.

(b) If the Firm fails to begin the Construction Phase Services within thirty (30) days of receipt of the Notice to Proceed; or

(c) If at any time during the progress of the work, the Firm is not prosecuting the work with reasonable speed, or is delaying the work unreasonably and unnecessarily; or

(d) If the force of workmen or quality or quantity of material furnished is not sufficient to insure completion of the Project within the Contract time and in accordance with the Contract Documents; or

(e) If the Firm shall wrongfully fail to make prompt payments for materials or labor to subcontractors for work performed; or

(f) If legal proceedings have been instituted against the Firm by others than the City in such manner as to interfere with the progress of the work provided for in the Contract Documents and which may subject the City to peril of litigation or outside claims; or

(g) If a receiver or trustee shall be appointed for the Firm or the Firm's property; or

(h) If the Contract or any right, monies, or claim there under shall be assigned by the Firm, otherwise than as herein specified; or

(i) If the Firm shall materially fail in any manner of substance to observe the provisions of this Agreement; or

(j) If any of the work, machinery, or equipment shall be defective, and shall not be replaced as herein provided; or

- (k) If the Project shall be abandoned by the Firm prior to substantial completion; or
- (l) If the Firm shall be adjudged a bankrupt or make an assignment for the benefit of creditors.

18.2 Termination by the City.

18.2.1 If the Firm commits a default as set forth in Section 18.1 or persistently fails or neglects to carry out the work in accordance with the Contract Documents, the City may terminate this Agreement, as provided for in subparagraph 18.2.2.

18.2.2 The City shall notify the Firm in writing of the Firm's default(s). If the City reasonably determines that the Firm has not remedied or cured the default(s) within seven (7) calendar days following receipt by the Firm of said written notice, or in the event the default is not monetary and cannot be remedied within said seven (7) day period that the Firm has not commenced the cure and is not diligently proceeding to complete the cure within seven (7) calendar days following receipt of written notice by the Firm, then the City may then give a second written notice and thereafter the City may, without prejudice to any other right or remedy it may be entitled to hereunder or by law, terminate the Firm's right to proceed under the Agreement, and take possession of the Work and any materials, tools, equipment, and appliances of the Firm, take assignments of any of the Firm's subcontracts and purchase orders, and complete the work or have the work completed by other third parties other than the City. In addition, the City shall retain all rights and remedies at law or in equity related to the default of the Firm.

18.3 Termination by the Firm

18.3.1 If the City fails to make payments when due in accordance with the terms of this Agreement, through no fault of the Firm or any of its subcontractors, consultants, sub-contractors, sub-consultants, agents or employees or any other person performing any of the Work under a contract with the Firm, or the City otherwise materially breaches this Agreement, the Firm shall give written notice to the City of the Firm's intention to terminate this Agreement. If the City fails to make such payment within seven (7) calendar days after its receipt of such notice, or the City otherwise fails to cure its breach within the said seven (7) calendar day period, or in the event the default is not monetary and cannot be remedied within said seven (7) day period that the City has not commenced the cure and is not diligently proceeding to complete the cure within seven (7) calendar days following receipt of written notice by the City, then the Firm may stop the work and may give a second written notice of its decision to terminate to the City and thereafter the Firm may, without prejudice to any other remedy, terminate this Agreement and recover from the City payment for work executed and for proven loss with respect to materials, equipment, tools, construction equipment and machinery, including reasonable overhead, loss profit and damages.

18.3.2 The Firm may terminate this Agreement if the work is stopped for: (a) a period of sixty (60) calendar days through no fault of the Firm or a subcontractor, consultant, sub-consultant, sub-subcontractor, or their agents or employees or any other persons performing portions of the work under a contract with the Firm, and if the stoppage of work is due to the issuance of an order of a court or other public authority having jurisdiction, an act of government, such as a declaration of national emergency making material unavailable; (b) repeated suspensions, delays or interruptions by the City constituting in aggregate of more than 90 calendar days in any 365 calendar day period; or (c) the City has failed to

furnish to the Firm evidence of funding as required by Section 9.5 hereof. If one of the preceding reasons exists, the Firm may, upon seven (7) calendar days written notice to the City, terminate this Agreement and recover from the City payment for work executed and for proven loss with respect to materials, equipment, tools, construction equipment and machinery, including reasonable overhead, loss profit and damages.

18.3.3 In the event the project is terminated for cause pursuant to this Article, the Firm, shall deliver all original sketches, tracings, drawings, computations, details, design calculations, specifications and other documents and plans that result from the Firm's services under this Agreement.

ARTICLE 19 AUDIT REQUIREMENTS

19.1 In the event, that during the period of this Agreement, the Firm expends more than \$500,000.00 in federal funds in an operating year from this and other federal grants, the Firm shall, at its own cost and expense, cause to be carried out an independent audit. The audit shall be completed and a copy furnished to the City, within the earlier of thirty (30) calendar days after receipt of the auditor's report(s) or nine (9) months after the end of the audit period, unless a longer period is agreed to in advance by the City. For purposes of this Agreement, an operating and/or audit year is the equivalent to the Firm's fiscal year. The determination of when Grant Funds are expended is based on when the activity related to the expenditure occurs.

19.2 The audit shall be conducted in compliance with the Office of Management and Budget Circular No. A-133, as amended and 24 CFR Parts 84 and 85, as applicable, which are made a part of this Agreement by reference thereto. In the event the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not expended in accordance with the conditions of this Agreement, the Firm shall be held liable for reimbursement to the City of all funds not expended in accordance with these applicable regulations and Agreement provisions within thirty (30) calendar days after the City has notified the Firm of such non-compliance. Said reimbursement shall not preclude the City from taking any other action as provided herein.

19.3 If expenditure does not exceed \$500,000.00 during an operating year, the Firm shall provide the City with its annual financial statement within ninety (90) days of the end of its operating year. Said financial statement shall be prepared by an actively licensed certified public accountant.

ARTICLE 20 COMPLETION AND INSPECTION

20.1 Substantial Completion. The work shall be substantially completed when the City's Representative determines that the work is substantially complete and can be utilized by the City for its intended use or the City takes occupancy of the Project, excluding that provided for in Section 9.1.1(d) of this Agreement, whichever occurs first. When Substantial Completion of the work has been achieved, the City's Representative and the Firm shall make an inspection of the work within seven (7) calendar days to determine the extent of completion. If the City's Representative considers the work substantially complete, the City's Representative will prepare and deliver to the Firm a "Punch List" of items to be completed or corrected by the Firm before final payment. The City shall have the right to exclude the Firm from the site after the date of Substantial Completion, but the City shall allow the Firm reasonable access to complete or correct items on the Punch List.

20.2 Final Progress Payment. At the date of Substantial Completion, the Firm may apply for and the City, if the Firm has satisfied the requirements of Section 20.1 and any other requirements of the Contract Documents relating to retainage, shall pay the Firm the amount retained, less 200% of the reasonable values on the Punch List. Final payment of such withheld sums shall be made upon correction or completion of such Work.

20.3 Final Inspection and Acceptance. Upon receipt by the City of written notice from the Firm that the work is ready for final inspection and acceptance and upon receipt of a Final Application for Payment, the City's Representative will promptly make such inspection and, if it finds the work acceptable and fully performed in compliance with the Contract Documents, the City will promptly issue a final Certificate for Payment, stating that, on the basis of its observations and inspections, the work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be owed the Firm is due and payable. Neither the final payment nor the retainage shall become due and payable until the Firm submits: (1) the Final Release and Affidavit in the form attached hereto as **Exhibit B**, and (2) consent of Surety to final payment.

ARTICLE 21 OTHER WORK

21.1 General. The City may perform other work related to the Project at the site by the City's own forces, have other work performed by utility owners or let other direct contracts. If the Firm believes that such performance will involve additional expense to the Firm or require additional time, the Firm shall notify the City for an adjustment to the Contract time and/or compensation as appropriate.

21.2 Access to Site. The Firm shall afford each utility owner and other contractor who is a party to such a direct contract with the City (or the City, if the City is performing the additional work with the City's employees) safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall connect and coordinate its work with theirs. The Firm shall do all cutting, fitting and patching of the work that may be required to make its several parts come together properly and integrate with such other work. If this requirement creates additional work, the Firm shall seek an adjustment to the Contract time and/or compensation in accordance with Section 21.1 above. The Firm shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the City's Representative and others whose work will be affected.

ARTICLE 22 DOCUMENT OWNERSHIP

22.1 General. All drawings, specifications and other documents furnished by the Firm thereafter shall become the property of the City upon receipt of payment by the Firm from the City for same. Drawings, specifications and other documents furnished by the Firm shall not be used by the City for the construction of other projects, or for additions to this Project, except by written agreement with the Firm relating to use, liability and compensation; provided, however, nothing herein shall require the City to obtain the Firm's prior consent to copy portions of any of the Project documents for illustrative purposes on other projects.

22.2 Record Copy. The Firm will keep one record copy of all drawings, specifications, addenda, modifications and shop drawings at the site, or in its primary local office, in good order and annotated to show all changes made during the construction process. These shall be available to the City's

Representative and shall be delivered to the City's Representative for the City upon completion of the work.

ARTICLE 23 SUCCESSORS AND ASSIGNS

23.1 General. This Agreement shall be binding on the successors, assigns, and legal representatives of the City and the Firm. Neither party shall assign any interest in this Agreement, in whole or in part, without the prior, express, written consent of the other party.

23.2 Survival. This Article shall survive completion or termination of this Agreement.

ARTICLE 24 INSURANCE

24.1 The Firm, at its own cost and expense, shall effect and maintain at all times during the life of this Agreement the insurance set out in **Exhibit F**.

24.2 Before commencing the performance of the services, the Firm shall cause to be delivered to the City good and sufficient certificate of insurance executed by the insurers certifying that the coverage required by this Article is in force and stating that thirty (30) calendar days written notice will be given the City: Contract Administration Department 306 E. Jackson Street, 4th Floor North Tampa, FL 33602.

24.3 Prior to any changes or cancellation in such coverage; and, if and when requested by the City, the Firm shall exhibit the original policy to the City for examination.

ARTICLE 25 NOTICES

Any notice or demand required or permitted to be given under this Agreement shall be in writing and may be given either (i) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) by sending same by Federal Express, Express Mail, Airborne, Emery, Purolator or other expedited mail or package delivery, or (iii) by hand delivery to the appropriate address as herein provided. Notices required hereunder shall be directed to the following addresses:

If to City: City of Tampa
Contract Administration Department
306 E. Jackson St.
Tampa, Florida 33602

Attn: David Vaughn, Director

With a copy to: City of Tampa
Office of the City Attorney
315 E. Kennedy Boulevard
Tampa, Florida 33602

Attn: David Smith, City Attorney

If to the Firm: HORUS Construction Services, Inc.
 P.O. Box 10667
 St. Petersburg, FL 33733

Jonathan D. Graham, President

or to such other address as either party may designate by proper notice given in accordance with this Article.

ARTICLE 26 GOVERNING LAW

This Agreement shall be governed and interpreted in accordance with the laws of the State of Florida. Any litigation arising out of or relating to this Agreement brought by any party hereto, shall be prosecuted solely and exclusively in the appropriate Florida state court in Hillsborough County, Florida.

ARTICLE 27 ENTIRE AGREEMENT

This Agreement constitutes the sole understanding of the City and the Firm and supersedes all prior agreements and negotiations between the parties. No modification, alteration or waiver of the terms of this Agreement shall be binding unless the same shall be in writing, dated subsequent to the date of this Agreement and duly executed by the party or parties intended to be bound by it.

ARTICLE 28 SEVERABILITY

Should any provision of this Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

ARTICLE 29 NONDISCRIMINATION/EEO/AFFIRMATIVE ACTION

29.1 During the term of this Agreement, the Firm, for itself, its assignees and successors in interest, certifies as follows:

29.1.1 There shall be no discrimination against any person who is employed in the work, or against any applicant for such employment, because of race, sex, religion, age, handicap, color or national origin. This provision shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and, selection for training, including apprenticeship. In the case of any subcontracting of the work, the Firm shall insert the preceding two sentences in its agreements with subcontractors.

29.1.2 In all solicitations, either by competitive bidding or negotiation made by the Firm for subcontractors, procurement of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the Firm of the Firm's obligations herein and under the ordinances and regulations relative to nondiscrimination on the grounds of race, color, age, religion, sex, handicap or national origin.

29.2 The Firm shall comply with the City's Women/Minority Business Enterprise Program as set forth in **Exhibit C**.

ARTICLE 30 ETHICS

30.1 In connection with this Agreement, the Firm hereby covenants and agrees that it shall comply with all applicable governmental laws, Florida statutes, rules and regulations including, without limitation, the City of Tampa's Code of Ethics. Pursuant to Section 2-522 of the City of Tampa Code, the Firm acknowledges that if it fails to comply with the City of Tampa's Code of Ethics, such a failure shall render this Agreement voidable by the City and subject the contracting party to debarment from any future City contracts or agreement.

30.2 The Firm shall disclose any clients that may either conflict with or affect its independent judgment when performing any work for the City of Tampa covered by this Agreement. Failure of the Firm to disclose the above professional conflict of interest may result in termination of this Agreement and may require the return of all payments, if any, made to the Firm from the City. If, in its sole discretion the City of Tampa determines that a professional conflict of interest is deemed to exist, the Firm shall be disqualified from participating in the proposed project.

ARTICLE 31 NO WAIVER OF RIGHTS

31.1 Neither the inspection, nor any order, measurements or certificate of the City or its employees, officers, or agents, nor by any order of the City for payment of money, nor any money, nor payments for or acceptance of the whole or any part of the work by the City, nor any extension of time, nor any changes in the Agreement, Specifications or Plans, nor any possession by the City or its employees shall operate as a waiver of any provisions of this Agreement, nor any power herein provided nor shall any waiver of any breach of this Agreement be held as a waiver of any other subsequent breach.

31.2 Any remedy provided in this Agreement shall be taken and construed as cumulative, namely, in addition to each and every other suit, action, or legal proceeding. The City shall be entitled as of right to an injunction against any breach of the provisions of this Agreement.

ARTICLE 32 NO ESTOPPEL

The City shall not, nor shall any department, officer, agent, or employee thereof, be bound, precluded, or estopped by any determination, decision, acceptance, return, certificate, or payment made or given under or in connection with this Agreement by any officer, agent or employee of the City at any time either before or after final completion and acceptance of the work and payment therefor: (a) from showing the true and correct classification, amount, quality, or character of the work done, or that any determination, decision, acceptance, return certificate or payment is untrue, incorrect or improperly made in any particular, or that the work or any part thereof does not in fact conform to the requirements of the Contract Documents, and (b) from demanding and recovering from the Agreement any overpayments made to him or such damages as it may sustain by reason his failure to comply with the requirements of the Contract of Documents, or both.

ARTICLE 33 EXHIBITS INCORPORATED

The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement:

Exhibit A - Public Construction Bond

Exhibit B - Final Release and Affidavit

Exhibit C - City's W/MBE Program

Exhibit D - Project Construction Documents as prepared by Heery International, Inc. dated August 20, 2007. (A Record Set is on file with the Contract Administration Dept.)

Exhibit E - HORUS Construction Service Inc.'s GMP PROPOSAL dated November 16, 2007, consisting of the Firm's Cover Letter, Project Narrative, GMP Proposal, Clarifications and Assumptions, Pricing Schedules, Staging Plan and Construction Schedule, and List of Documents.

Exhibit F - Insurance

ARTICLE 34 **MISCELLANEOUS**

34.1 Article Headings. Article headings in this Agreement are for convenience of reference only, and shall not be considered to be part of this Agreement or used in its interpretation.

34.2 No Joint Venture. Nothing in this Agreement shall be deemed to create or constitute a joint venture or partnership between the Firm and the City with respect to the Project or this Agreement.

34.3 Time of Essence. Time is of the essence for both parties hereto with respect to their performance hereunder.

34.4 Date. The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically designated. If any date specified in this Agreement falls on a Saturday, Sunday or legal holiday, then the date to which such reference is made shall be extended to the next succeeding business day.

34.5 Standard or Codes. The Firm shall comply with all applicable local, State and Federal laws, rules, ordinances and regulations relative to the work, and shall obtain all permits, licenses or other authorization necessary for the prosecution of the work provided for herein.

34.6 Construction. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, the term "including" is not limiting and the terms "hereof", "herein", "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.

34.7 Records. The Firm shall keep and preserve all books, documents, papers, accounting records and other evidence pertaining to the Cost of Construction and shall make such materials available at its Tampa office at reasonable times during the term of the Agreement and for three (3) years from the date of final payment hereunder or such longer period of time as may be required by applicable law, for inspection by the City and any authorized representative of the United States Federal Government; and copies thereof shall be furnished by the Firm if requested, at the City's expense.

34.8 Indemnity. In case any action at law or suit in equity may or shall be brought against the City or any of its officers, agents, or employees for or on account of the failure, omission, or neglect of the Firm or its subcontractors, employees, or agents, to do or perform any of the covenants, acts, matters, or things undertaken to be done or performed by the Firm or its subcontractors, employees, or agents, or from any injuries done to property or persons and caused by the negligence of the Firm or its subcontractors, employees, or agents, or in any other manner arising out of the negligent performance of the work required under the Contract Documents or this Agreement by the Firm then, to the extent such suit or action is due to the fault or neglect of the Firm or its subcontractors, employees or agents, the Firm shall defend such action or suit as if said actions or suits have been brought directly against the Firm; and the Firm shall also indemnify and save harmless the City, its officers, agents, and employees from any and all loss, cost or damage whatever arising out of such actions or suits, in like manner and to all intents and purposes as if said actions or suits have been brought directly against the Firm, to the extent such suit or action is due to the fault or neglect of the Firm or its subcontractors, employees or agents.

The Firm shall and does hereby assume all liability for and agrees to indemnify the City or its representatives against any or all loss, costs, damages, and liability for any or by reason of any lien, claims or demands, either for materials purchased or for work performed by laborers, mechanics, and others and from any damages, costs, actions, or causes of action and judgments arising from injuries sustained by mechanics, laborers, and other person by reason of accidents or otherwise, to the extent caused by the negligence of said Firm, or its subcontractors, agents, employees, or workmen.

34.9 Conflicts. In the event of any conflict between the terms of this Agreement, the Contract Documents, the Project Construction Documents or any exhibit hereto the terms of this Agreement shall control.

34.10 Patent Fees and Royalties. The Firm shall pay all license fees and royalties and assume all costs associated with any invention, design, process, or device which is subject of patent rights or copyrights held by others and is necessary for completion of the Work required by this Agreement, Contract Documents or Project Construction Documents.

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the dates indicated below.

HORUS CONSTRUCTION, INC.

THE CITY OF TAMPA, FLORIDA

By: _____
Jonathan D. Graham, President

By: _____
Pam Iorio, Mayor

ATTEST:

ATTEST:

Corporate Secretary (SEAL)

Shirley Foxx-Knowles, City Clerk (SEAL)

Approved as to Form and authorized
By Resolution No. 20____-____:

Justin R. Vaske, Assistant City Attorney

EXHIBIT _____

PUBLIC CONSTRUCTION BOND

Bond No. (enter bond number): _____

Name of Contractor: _____

Principal Business Address of Contractor: _____

Telephone Number of Contractor: _____

Name of Surety (if more than one list each): _____

Principal Business Address of Surety: _____

Telephone Number of Surety: _____

Owner is The City of Tampa, Florida

Principal Business Address of Owner: _____ 306 E Jackson St. Tampa, FL 33602 _____

Contract Administration Department (280A4N)

Telephone Number of Owner: _____ 813/274-8456 _____

Contract Number Assigned by City to contract which is the subject of this bond: _____

Legal Description or Address of Property Improved or Contract Number is: _____

General Description of Work and Services: _____

KNOW ALL MEN BY THESE PRESENTS That we, _____

(Name of Contractor)

as Principal, hereinafter called CONTRACTOR, of the State of _____, and _____ (Name of Surety) a corporation organized and existing under and by virtue of the laws of the State of _____, and regularly authorized to do business in the State of Florida, as SURETY, are held and firmly bound unto the City of Tampa, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter called Owner, in the penal sum of _____ Dollars and _____ Cents (\$ _____), lawful money of the United States of America, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated _____, _____, 20____, between Principal and Owner for construction of _____, the contract being made a part of this bond by reference, in the time and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1) (Section 713.01), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.
5. Contractor and Surety acknowledge that the Work for which this bond has been issued may be one of several such contract documents for a group of projects. This bond does not secure covenants to pay for or to perform design services survey or program management services. The Owner/Obligee is expected to reasonably account for damages that are caused to Owner with respect to Principal's (Contractor's) default in performance of the scope of the Work incorporated by reference into the bond, and notwithstanding any contractual or common law remedy permitted to Owner as against Contractor, the obligation of Surety for any damages under this bond shall be determined by the cost of completion of the Work less the contract balance unpaid upon default of Contractor for the Work plus liquidated damages at the rate of \$500.00 per day for delays by the Contractor and/or Surety in reaching substantial completion.
6. The notice requirements for claimants and conditions for entitlement to payment set forth in Section 255.05, Fla. Stat. and the limitations period to actions upon Section 255.05, Fla. Stat. bonds apply to claimants seeking payment from surety under this bond. Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05, Florida Statutes.
7. The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the contract documents or other Work to be performed hereunder, or the specifications referred to therein shall in any way affect its obligations under this bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to Work or to the specifications.

8. The above SURETY states that it has read all of the Contract Documents made by the CONTRACTOR with the CITY, hereto attached, and the terms and conditions of the contract and work, and is familiar therewith and in particular those portions of the Agreement concerning the guaranty of such CONTRACTOR for a period of one year following the date of the final acceptance of the completed work under the Contract by the CITY, all of which this BOND includes.

DATED ON _____, 20__

(Name of Principal)

(Name of Surety)

(Principal Business Address)

(Surety Address)

By _____

By _____
(As Attorney in Fact)*

Title _____

Telephone Number of Surety

Telephone Number of Principal

Accepted by City of Tampa:

Countersignature:

By _____
Pam Iorio, Mayor

(Name of Local Agency)

Date: _____, 20__

(Address of Resident Agent)

By _____

Approved as to legal sufficiency:

Title _____

By _____
Assistant City Attorney

Telephone Number of Local Agency

Date: _____, 20__

**(As Attorney in Fact) attach Power of Attorney and Current Certificate with Original Signature

AFFIDAVIT OF CONTRACTOR IN CONNECTION
WITH FINAL PAYMENT

STATE OF FLORIDA _____ }
COUNTY OF _____)

BEFORE ME, the undersigned authority duly licensed and authorized under the laws of the State of Florida to administer oaths and take acknowledgements, personally appeared

«CONTACT»

To me known to be the individual described in and who executed this affidavit, who being by me first duly sworn deposes and says:

That he is President of «CONTRACTORLOWER» the Contractor under contract with the City of Tampa for construction of «PROJECTLOWER», and he certifies:

That all bids for labor, service, materials, equipment, supplies, and/or subcontractors in connection with the work performed by <<CONTRACTORLOWER>> and its subcontractors under the pursuant to the provisions of said Contract, dated <<ORGCONTRDATE>>, have been paid except as herein below listed:

List of Exceptions	Amount Owed
A.	\$
B.	\$
C.	\$
D.	\$

And that there are no suits pending or threatened to be brought in connection with the work done and the materials furnished under said Contract except as herein below listed:

List of Pending Suits:

A.
B.
C.
D.

And that the City of Tampa is hereby released from any claim which might arise out of said Contract.

(If there are no exceptions, please write "NONE" in the area(s) above. The attached "Consent of Surety" form must be executed before the City will process Final Payment)

That this Affidavit is made and submitted to the City of Tampa pursuant to the provisions contained in the Contract in order that the Contractor may receive Final Payment.

«CONTRACTORLOWER»

Sworn to and subscribe before me
This _____ day of _____

BY: <<CONTACT>>, President _____ A.D. 20 _____

My Commission Expires:

CONSENT OF SURETY

The «SURETYLOWER», Surety on Project «PROJECTNO», «PROJECTLOWER», between the City of Tampa and <<CONTRACTLOWER», being aware of amounts as delineated in the Affidavits executed by <<CONTACT>> the President of << CONTRACTLOWER», owing on said Project, hereby consents to and approves the final payment by the City of the stipulated balance due on the aforesaid Contract to «CONTRACTORLOWER» with the understanding that the Surety will extend the obligation of the Payment Bond and Performance Bond for the payment of any and all legitimate claims in the connection with said Project which may be against «CONTRACTORLOWER» or against the City of Tampa until such time as the outstanding claims have been paid, settled or compromised; and said Surety will hold the City harmless from any claims, disputes, or litigation which may ensue because the City is making final payment to said Contractor.

(SEAL) «SURETYATT»
Attorney-in Fact for
«SURETYUPPER»

Sworn to and subscribed before me this
____ day of _____ A.D. 200_

Notary Public, State of

My Commission Expires:

AFFIDAVIT OF CONTRACTOR IN CONNECTION
WITH FINAL PAYMENT

STATE OF FLORIDA _____)
COUNTY OF _____ }

BEFORE ME, the undersigned authority duly licensed and authorized under the laws of the State of Florida to administer oaths and take acknowledgements, personally appeared

«CONTACT»

To me known to be the individual described in and who executed this affidavit, who being by me first duly sworn deposes and says:

That he is President of «CONTRACTORLOWER» the Contractor under contract with the City of Tampa for construction of «PROJECTLOWER», and he certifies:

That all bids for labor, service, materials, equipment, supplies, and/or subcontractors in connection with the work performed by «CONTRACTORLOWER» and its subcontractors under the provisions of said Contract, dated «ORGCONTRDATE», have been paid except as herein below listed:

List of Exceptions	Amount Owed
A.	\$
B.	\$
C.	\$
D.	\$

And that there are no suits pending or threatened to be brought in connection with the work done and the materials furnished under said Contract except as herein below listed:

List of Pending Suits:

A.
B.
C.
D.

And that the City of Tampa is hereby released from any claim which might arise out of said Contract.

(If there are no exceptions, please write "NONE" in the area(s) above. The attached "Consent of Surety" form must be executed before the City will process Final Payment)

That this Affidavit is made and submitted to the City of Tampa pursuant to the provisions contained in the Contract in order that the Contractor may receive Final Payment.

«CONTRACTORLOWER»

Sworn to and subscribe before me
This _____ day of _____

BY: «CONTACT», President _____ A.D. 20____

My Commission Expires:

CONSENT OF SURETY

The «SURETYLOWER», Surety on Project «PROJECTNO», «PROJECTLOWER», between the City of Tampa and <<CONTRACTLOWER>>, being aware of amounts as delineated in the Affidavits executed by <<CONTACT>> the President of << CONTRACTLOWER>>, owing on said Project, hereby consents to and approves the final payment by the City of the stipulated balance due on the aforesaid Contract to «CONTRACTORLOWER» with the understanding that the Surety will extend the obligation of the Payment Bond and Performance Bond for the payment of any and all legitimate claims in the connection with said Project which may be against «CONTRACTORLOWER» or against the City of Tampa until such time as the outstanding claims have been paid, settled or compromised; and said Surety will hold the City harmless from any claims, disputes, or litigation which may ensure because the City is making final payment to said Contractor.

(SEAL) «SURETYATT»
Attorney-in Fact for
«SURETYUPPER»

Sworn to and subscribed before me this
_____ day of _____ A.D. 200_

Notary Public, State of

My Commission Expires:

EXHIBIT C

CITY'S W/MBE PROGRAM

In conjunction with existing WMBE requirements, the following WMBE procedures for Construction Management (CM) and Design-Build, Quality based selection (DB-Q) projects will be utilized:

- Prior to the time goals are set, the Construction Manager (CM) or the Design-Builder (D/B) provides information on what subcontract packages are planned (via the Project Task Worksheet) and their sequencing.
- The CM (or D/B) participates in the goal setting meeting for their projects.
- For each subcontracting package to be bid, the CM (or D/B) meets with the WMBE Office and reviews what certified WMBE firms are appropriate for work.
- The CM (or D/B) notifies via certified mailing every WMBE firm identified in the previous sentence.
- The CM (or D/B) receives, opens, and tabulates subcontract bid results. The City, including representatives of the managing department and the WMBE Office, are allowed to be present for the bid openings and provided access to review the bids submitted. (If bid openings are otherwise not public, the CM (or D/B) will issue results in accordance with State Law.)
- The CM (or D/B) provides to the City their determination of the lowest responsive/responsible bidder. If bids received exceed contracted Guaranteed Maximum Price, CM (or D/B) advises City as to how they will proceed. If re-bidding is selected, notification at least equal to the original solicitation will re-occur.
- As subcontracts are executed, final copies are provided to the City. Where participation is achieved via sub-subcontractors and/or suppliers, the CM (or D/B) provides the City with copy of executed agreement or purchase order as documentation.
- During construction, monitoring activities occur similar to normal construction methods, including but not limited to, monthly reports submitted with pay requests, no substitution without prior approval by the WMBE Office and the managing departments, etc.) as described in the "Contract Documents Minority Business Enterprise Program" document (WMBE Program Document) attached to this exhibit. In the event of a conflict between this page and the WMBE Program Document, this page shall take precedence.

EXHIBIT D

Design Documents prepared by:

Heery International, Inc.

(90% Construction Documents issued by Heery International, Inc,
dated August 20, 2007 and the Guaranteed Maximum Price Proposal dated
November 16, 2007

Drawings and Specifications are incorporated herein by reference
and are a part of this Agreement
(A Record set on file with the Contract Administration Department).

EXHIBIT E

HORUS Construction, Services, Inc.'s GMP PROPOSAL,

dated November 16, 2007,

consisting of the Firm's GMP Proposal, Pricing Schedules,

and Construction Schedule.

INSURANCE

EXHIBIT: F

During the life of the Agreement, the CONSULTANT shall provide, pay for, and maintain with insurance companies satisfactory to the City, the types of insurance described below:

COMMERCIAL GENERAL LIABILITY INSURANCE - Must be written on ISO Occurrence Form CG 00 01 or equivalent substitute form to cover liability arising from premises and operations, independent contractors, products and completed operations, personal and advertising injury, contractual liability, and XCU exposures, if XCU perils exist. Completed operations liability coverage shall be maintained for a minimum of one year following completion of the work. The minimum combined single limit shall be \$2,000,000 each occurrence.

AUTOMOBILE LIABILITY INSURANCE - Not required if use of vehicles is limited to driving to and from the job site. When required, such policy must be maintained in accordance with the laws of the State of Florida as to the ownership, maintenance, and use of all owned, non-owned, leased and hired vehicles. The minimum combined single limit shall be \$1,000,000 each accident.

WORKERS' COMPENSATION/EMPLOYER'S LIABILITY INSURANCE - Workers' compensation insurance shall cover all employees engaged in work for the CONSULTANT in accordance with the laws of the State of Florida. The employer's liability insurance limit shall not be less than \$500,000 disease each employee, \$500,000 disease aggregate and \$500,000 each accident.

PROFESSIONAL LIABILITY INSURANCE - Must protect the CONSULTANT against claims of negligence, errors, mistakes, or omissions in the performance of the services to be performed and furnished by the CONSULTANT or any of its subcontractors. The limit shall not be less than \$500,000.

ADDITIONAL INSURED - The City must be included as an insured by way of ISO endorsement CG 20 10 or its equivalent on the general and excess liability policies. Alternatively, the CONSULTANT may purchase a separate owners protective liability policy in the name of the City in the amounts specified above for general liability which shall be excess over any insurance of the CONSULTANT.

CLAIMS MADE POLICIES - If any liability insurance is issued on a claims made form, CONSULTANT agrees to maintain uninterrupted coverage for a minimum of one year following completion and acceptance of the work either through purchase of an extended reporting provision, or through purchase of successive renewals with a retroactive date not later than the beginning of performance of work for the City.

CANCELLATION/NON-RENEWAL - Thirty (30) days written notice by registered or certified mail must be given to the City of any cancellation, intent to non-renew, or material reduction in coverages. However, then (10) days notice may be given for non-payment of premium. Notice shall be sent to the City of Tampa Department of Public Works, 306 East Jackson St. 4N, Tampa, Florida 33602.

NUMBER OF POLICIES - General and other liability insurance may be arranged under single policies for the full amounts required or by a combination of underlying policies with the balance provided by an umbrella liability policy,

EVIDENCE OF INSURANCE - Prior to beginning any work under this Agreement, CONSULTANT must furnish a certificate of insurance acceptable to the City. Certified copies of the policies evidencing the coverages required herein are also acceptable, and if requested, shall be furnished to the City. Renewal certificates shall be provided to the City at least ten (10) days prior to expiration of the current coverages,

WAIVER OF SUBROGATION - CONSULTANT waives all rights against City, its agents, officers, directors and employees for recovery of damages to the extent such damage is covered under the policies required herein, except as to workers compensation and professional liability.

SUBCONTRACTORS - It is the CONSULTANT'S responsibility to require all subcontractors to maintain adequate insurance coverage.

PRIMARY POLICIES - The CONSULTANT'S insurance is primary to the City's insurance or any self insurance program thereof.

RATING - All insurers shall be authorized to do business in Florida, and shall have an A.M. Best rating of B+ (or better), class VI (or higher), or otherwise be acceptable to the City if not rated by A.M. Best.

DEDUCTIBLES - The CONSULTANT is responsible for all deductibles. In the event of loss which would have been covered but for the presence of a deductible, the City may withhold from payment to CONSULTANT an amount equal to the deductible to cover such loss should full recovery not be obtained under the insurance policy.

INSURANCE ADJUSTMENTS - These insurance requirements may be increased, reduced, or waived at the City's sole option with an appropriate adjustment to the contract price.

INDEMNIFICATION

The CONSULTANT shall indemnify, defend, save and hold harmless the CITY from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of, or due to the breach of this Agreement by the CONSULTANT, its subcontractors, agents or employees, or due to any negligent act, error or omission of the CONSULTANT, its subcontractors, agents or employees in rendering the professional services called for herein. It is specifically understood that this indemnification provision does not cover or indemnify the CITY for its own negligence or breach of contract.