

CONSTRUCTION AGREEMENT

THE CITY OF NAPLES, FLORIDA, ("Owner") hereby contracts with **SALTSMAN CONSTRUCTION, INC.** ("Contractor") a Florida corporation, to perform all work ("Work") in connection with Sand-Tightening the Gordon Pass Jetty ("Project"), as said Work is set forth in the Plans and Specifications prepared by Humiston & Moore Engineers the Engineer of Record ("Design Professional") and other Contract Documents hereafter specified.

Owner and Contractor, for the consideration herein set forth, agree as follows:

Section 1. Contract Documents.

A. The Contract Documents consist of this Agreement, the Exhibits described in Section 6 hereof, the Legal Advertisement, the Instructions to Bidders, the Bid Schedule and any duly executed and issued addenda, Change Orders, Work Directive Changes, Field Orders and amendments relating thereto. All of the foregoing Contract Documents are incorporated by reference and made a part of this Agreement (all of said documents including the Agreement sometimes being referred to herein as the "Contract Documents" and sometimes as the "Agreement"). A copy of the Contract Documents shall be maintained by Contractor at the Project site at all times during the performance of the Work.

B. Owner shall furnish to the Contractor up to five (5) sets of the Contract Documents as are reasonably necessary for execution of the Work. Additional copies of the Contract Documents shall be furnished, upon request, at the cost of reproduction.

Section 2. Scope of Work.

Contractor agrees to furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely, and fully perform and complete in a good and workmanlike manner the Work required by the Contract Documents as set forth in Exhibit 1 attached hereto.

Section 3. **Contract Amount.**

In consideration of the faithful performance by Contractor of the covenants in this Agreement to the full satisfaction and acceptance of Owner, Owner agrees to pay, or cause to be paid, to Contractor the following amount (herein "Contract Amount"), in accordance with the terms of this Agreement: In an amount not to exceed as set forth in Exhibit 2 attached hereto **SEVEN HUNDRED TWENTY NINE THOUSAND SEVEN HUNDRED TWENTY ONE DOLLARS (\$729,721.00) AND NO CENTS.**

Section 4. Bonds.

A. Contractor shall provide Performance and Payment Bonds, in the form prescribed in Exhibit B, in the amount of 100% of the Contract Amount, the costs of which to be paid by Contractor. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall be rated as "A-" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holders surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038. Should the contract amount be less than \$500,000, the requirements of Section 287.0935, F.S. shall govern the rating and classification of the surety.

B. If the surety for any bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, the Contractor shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the Owner's approval.

Section 5. Contract Time and Liquidated Damages.

A. Time is of the essence in the performance of the Work under this Agreement. The "Commencement Date" shall be established in the Notice to Proceed to be issued by the Owner. Contractor shall commence the Work within five (5) calendar days from the Commencement Date. No Work shall be performed at the Project site prior to the Commencement Date. Any Work performed by Contractor prior to the Commencement Date shall be at the sole risk of Contractor. The Work shall be substantially completed within 120 calendar days from the Commencement Date. The date of substantial completion of the Work (or designated portions thereof) is the date

certified by the Design Professional when construction is sufficiently complete, in accordance with the Contract Documents, so Owner can occupy or utilize the Work (or designated portions thereof) for the use for which it is intended. The work shall reach final completion and be ready for final acceptance by Owner within 120 calendar days from the Commencement Date (herein "Contract Time").

B. Owner and Contractor recognize that, since time is of the essence for this Agreement, Owner will suffer financial loss if the Work is not substantially completed within the time specified above, as said time may be adjusted as provided for herein. Should Contractor fail to substantially complete the Work within the time period noted above, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, \$300.00 for each calendar day thereafter until substantial completion is achieved. The Project shall be deemed to be substantially completed on the date the Design Professional issues a Certificate of Substantial Completion pursuant to the terms hereof. Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the Owner's actual damages at the time of contracting if Contractor fails to substantially complete the Work in a timely manner.

C. When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday or legal holiday.

Section 6. Exhibits Incorporated.

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

- Exhibit A: General Terms and Conditions
- Exhibit B: Form of Performance and Payment Bonds
- Exhibit C: Insurance Requirements
- Exhibit D: Form of Release and Affidavit
- Exhibit E: Form of Contractor Application for Payment
- Exhibit F: Form of Change Order
- Exhibit G: Supplemental Terms and Conditions
- Exhibit H: Technical Specifications
- Exhibit I: Standard Details
- Exhibit J: Plans and Specifications prepared by Humiston & Moore Engineers and identified as follows:
Schedules 1 through Schedule 6.

Section 7. Notices.

A. All notices required or made pursuant to this Agreement by the Contractor to the Owner shall be in writing and delivered by hand or by United States Postal Service Department, first class mail, postage pre-paid, return receipt requested, addressed to the following:

Dr. Jon C. Staiger, Natural Resources Manager, City of Naples, 735 Eighth Street South, Naples, Florida 34102.

B. All notices required or made pursuant to this Agreement by Owner to Contractor shall be made in writing and shall be delivered by hand or by United States Postal Service Department, first class mail, postage pre-paid, return receipt requested, addressed to the following:

John Saltsman, Saltsman
Construction, Inc., 194 14th Avenue
South, Naples, Florida 34102.

C. Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

Section 8. Modification.

No modification or change to the Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

Section 9. Successors and Assigns.

Subject to other provisions hereof, the Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Agreement.

Section 10. Governing Law.

The Agreement shall be interpreted under and its performance governed by the laws of the State of Florida.

Section 11. No Waiver.

The failure of the Owner to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

Section 12. Entire Agreement.

Each of the parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by the Agreement.

Section 13. Severability.

Should any provision of the 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.

CONTRACTOR:

ATTEST:

By: _____

Printed Name:

Its: _____ President

Date: _____

Corporate Secretary/Witness

[Corporate Seal]

2nd Witness (if not incorporated)

Date: _____

OWNER:

ATTEST:

CITY OF NAPLES, FLORIDA

Tara Norman, City Clerk

By: _____

By: _____
Kevin J. Rambosk, City Manager

Approved As To Form and Legal Sufficiency:

City Attorney

EXHIBIT A
GENERAL TERMS AND CONDITIONS

1. INTENT OF CONTRACT DOCUMENTS.

1.1. It is the intent of the Contract Documents to describe a functionally complete project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words which have a well known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in effect at the time the Work is performed, except as may be otherwise specifically stated herein.

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

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

2. INVESTIGATION AND UTILITIES.

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

2.2. Contractor shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project site, said roadways, railways, drainage facilities and utilities being referred to in this Sub-Section 2.2 as the "Utilities". Contractor shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Contractor shall schedule and coordinate its Work around any such relocation or temporary service interruption. Contractor shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the Work.

3. SCHEDULE.

3.1. The Contractor, within ten (10) calendar days after receipt of the Notice of Award, shall prepare and submit to Owner and Design Professional, for their review and approval, a progress schedule for the Project (herein "Progress Schedule"). The Progress Schedule shall relate to all Work required by the Contract Documents, and shall utilize the Critical Path method of scheduling and shall provide for expeditious and practicable execution of the Work within the Contract Time. The Progress Schedule shall indicate the dates for starting and completing the various stages of the Work.

3.2. The Progress Schedule shall be updated monthly by the Contractor. All monthly updates to the Progress Schedule shall be subject to the Owner's and Design Professional's review and approval. Contractor shall submit the updates to the Progress Schedule with its monthly Applications for Payment noted below. The Owner's and Design Professional's review and approval of the

submitted Progress Schedule updates shall be a condition precedent to the Owner's obligation to pay Contractor.

4. PROGRESS PAYMENTS.

4.1. Prior to submitting its first monthly Application for Payment, Contractor shall submit to Owner and the Design Professional, for their review and approval, a schedule of values based upon the Contract Price, listing the major elements of the Work and the dollar value for each element. After its approval by the Owner and Design Professional, this schedule of values shall be used as the basis for the Contractor's monthly Applications for Payment. This schedule shall be updated and submitted each month to the Design Professional along with a completed and notarized copy of the Application for Payment form attached to the Agreement as Exhibit E.

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

4.3. If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site or at another location agreed to by the Owner in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that the Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which shall be subject to the Owner's satisfaction.

4.4. Contractor shall submit six (6) copies of its monthly Application for Payment to the Design Professional on or before the 25th day of each month unless otherwise stipulated by the Owner for work performed during the previous month. Invoices received after the 25th day of each month shall be considered for payment as part of the next month's application. Within ten (10) calendar days after receipt of each Application for Payment, the Design Professional shall either: (1) indicate his approval of the requested payment; (2) indicate his approval of only a portion of the requested payment, stating in writing his reasons therefor; or (3) return the Application for Payment to the Contractor indicating, in writing, the reason for refusing to approve payment.

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

4.5. Owner shall retain ten percent (10%) of the gross amount of each monthly payment request or ten percent (10%) of the portion thereof approved by the Design Professional for payment, whichever is less. Such sum shall be accumulated and not released to Contractor until final payment is due unless otherwise agreed to by the Owner.

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

4.7. Each Application for Payment shall be accompanied by a Release and Affidavit, in the form attached as Exhibit D, showing that all materials, labor, equipment and other bills associated with that portion of the Work payment is being requested on have been paid in full. The Owner shall not be required to make payment until and unless these affidavits are furnished by Contractor.

4.8. Contractor agrees and understands that funding limitations exist and that the expenditure of funds must be spread over the duration of the Project at regular intervals based on the Contract Amount and Progress Schedule. Accordingly, prior to submitting its first monthly Application for Payment, Contractor shall prepare and submit for Owner's and Design Professional's review and approval, a detailed Project Funding Schedule, which shall be updated as necessary and approved by Owner to reflect approved adjustments to the Contract Amount and Contract Time. No voluntary acceleration or early completion of the Work shall modify the time of payments to Contractor as set forth in the approved Project Funding Schedule.

5. PAYMENTS WITHHELD.

5.1. The Design Professional or Owner may decline to approve any Application for Payment, or portions thereof, because of subsequently discovered evidence or subsequent inspections. The Design Professional or Owner may nullify the whole or any part of any approval for payment previously issued and Owner may withhold any payments otherwise due Contractor under this Agreement or any other agreement between Owner and Contractor, to such extent as may be necessary in the Owner's opinion to protect it from loss because of: (a) defective Work not remedied; (b) third party claims filed or

reasonable evidence indicating probable filing of such claims; (c) failure of Contractor to make payment properly to subcontractors or for labor, materials or equipment; (d) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount; (e) reasonable indication that the Work will not be completed within the Contract Time; (f) unsatisfactory prosecution of the Work by the Contractor; or (g) any other material breach of the Contract Documents.

5.2. If any conditions described in 5.1. are not remedied or removed, Owner may, after three (3) days written notice, rectify the same at Contractor's expense. Owner also may offset against any sums due Contractor the amount of any liquidated or unliquidated obligations of Contractor to Owner, whether relating to or arising out of this Agreement or any other agreement between Contractor and Owner.

6. FINAL PAYMENT.

6.1. Owner shall make final payment to Contractor within thirty (30) calendar days after the Work is finally inspected and accepted by both Owner and the Design Professional in accordance with Section 20.1 herein, provided that Contractor first, and as an explicit condition precedent to the accrual of Contractor's right to final payment, shall have furnished Owner with a properly executed and notarized copy of the Release and Affidavit attached as Exhibit D, as well as, a duly executed copy of the Surety's consent to final payment and such other documentation that may be required by the Contract Documents and the Owner.

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

7. SUBMITTALS AND SUBSTITUTIONS.

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

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

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

7.4. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the Design Professional, if Contractor submits sufficient information to allow the Design Professional to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission

to and review by the Design Professional shall be the same as those provided herein for substitute materials and equipment.

7.5. The Design Professional shall be allowed a reasonable time within which to evaluate each proposed substitute. The Design Professional shall be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without the Design Professional's and the Owner's prior written acceptance which shall be evidenced by either a Change Order or an approved Shop Drawing. The Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. The Design Professional will record time required by the Design Professional and the Design Professional's consultants in evaluating substitutions proposed by Contractor and making changes in the Contract Documents occasioned thereby. Whether or not the Owner accepts a proposed substitute, Contractor shall reimburse Owner for the charges of the Design Professional and the Design Professional's consultants for evaluating each proposed substitute.

8. DAILY REPORTS, AS-BUILTS AND MEETINGS.

8.1. Unless waived in writing by Owner, Contractor shall complete and submit to Design Professional on a weekly basis a daily log of the Contractor's work for the preceding week in a format approved by the Design Professional and Owner. The daily log shall document all activities of Contractor at the Project site including, but not limited to, the following:

- 8.1.1. Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the Project site, and any other weather conditions which adversely affect the Work;
- 8.1.2. Soil conditions which adversely affect Work;
- 8.1.3. The hours of operation by Contractor's and subcontractor's personnel;
- 8.1.4. The number of Contractor's and subcontractor's personnel present and working at the Project site, by subcontract and trade;
- 8.1.5. All equipment present at the Project site, description of equipment use and designation of time equipment was used (specifically indicating any down time);
- 8.1.6. Description of Work being performed at the Project site;

- 8.1.7. Any unusual or special occurrences at the Project site;
- 8.1.8. Materials received at the Project site;
- 8.1.9. A list of all visitors to the Project
- 8.1.10. Any problems that might impact either the cost or quality of the Work or the time of performance.

The daily log shall not constitute nor take the place of any notice required to be given by Contractor to Owner or Design Professional pursuant to the Contract Documents.

8.2. Contractor shall maintain in a safe place at the Project site one record copy of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, Change Orders, Work Directive Changes and Field Orders, as well as all written interpretations and clarifications issued by the Design Professional, in good order and annotated to show all changes made during construction. The annotated drawings shall be continuously updated by the Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Work Directive Changes and Field Orders, and all concealed and buried installations of piping, conduit and utility services. All buried and concealed items, both inside and outside the Project site, shall be accurately located on the annotated drawings as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The annotated drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color.

The "As-Built" record documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to Design Professional for reference. Upon completion of the Work and as a condition precedent to Contractor's entitlement to final payment, these "As-Built" record documents, samples and shop drawings shall be delivered to Design Professional by Contractor for Owner.

8.3. Contractor shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, whichever is later.

Owner, or any duly authorized agents or representatives of Owner, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above; provided, however, such activity shall be conducted only during

normal business hours.

9. CONTRACT TIME AND TIME EXTENSIONS.

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

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

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

10. CHANGES IN THE WORK.

10.1. Owner shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, Contractor shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or as expressly set forth herein, no addition or changes to the Work shall be made except upon written order of Owner, and Owner shall not be liable to the Contractor for

any increased compensation without such written order. No officer, employee or agent of Owner is authorized to direct any extra or changed work orally.

10.2. A Change Order, in the form attached as Exhibit F to this Agreement, shall be issued and executed promptly after an agreement is reached between Contractor and Owner concerning the requested changes. Contractor shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount and Contract Time shall be adjusted in the Change Order in the manner as Owner and Contractor shall mutually agree.

10.3. If Owner and Contractor are unable to agree on a Change Order for the requested change, Contractor shall, nevertheless, promptly perform the change as directed by Owner in a written Work Directive Change. In that event, the Contract Amount and Contract Time shall be adjusted as directed by Owner. If Contractor disagrees with the Owner's adjustment determination, Contractor must make a claim pursuant to Section 11 of these General Conditions or else be deemed to have waived any claim on this matter it might otherwise have had.

10.4. In the event a requested change results in an increase to the Contract Amount, the amount of the increase shall be limited to the Contractor's reasonable direct labor and material costs and reasonable actual equipment costs as a result of the change (including allowance for labor burden costs) plus a maximum ten percent (10%) markup for all overhead and profit. In the event such change Work is performed by a Subcontractor, a maximum ten percent (10%) markup for all overhead and profit for all Subcontractors' and sub-subcontractors' direct labor and material costs and actual equipment costs shall be permitted, with a maximum five percent (5%) markup thereon by the Contractor for all of its overhead and profit, for a total maximum markup of fifteen percent (15%). All compensation due Contractor and any Subcontractor or sub-subcontractor for field and home office overhead is included in the markups noted above. Contractor's and Sub-Contractor's bond costs associated with any change order shall be included in the overhead and profit expenses and shall not be paid as a separate line item.

10.5. Owner shall have the right to conduct an audit of Contractor's books and records to verify the accuracy of the Contractor's claim with respect to Contractor's costs associated with any Change Order.

10.6. The Design Professional shall have authority to order minor changes in the Work not involving an adjustment to the Contract Amount or an extension to the Contract 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 on the Contractor.

11. CLAIMS AND DISPUTES.

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

11.2. Claims by the Contractor shall be made in writing to the Owner and Design Professional within forty-eight (48) hours after the first day of the event giving rise to such Claim or else the Contractor shall be deemed to have waived the Claim. Written supporting data shall be submitted to the Owner and Design Professional within fifteen (15) calendar days after the occurrence of the event, unless the Owner grants additional time in writing, or else the Contractor shall be deemed to have waived the Claim. All claims shall be priced in accordance with the provisions of Subsection 10.4.

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

12. OTHER WORK.

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

12.2. Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or Owner, if Owner is performing the additional work with Owner's employees)

proper and 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 properly connect and coordinate its Work with theirs. Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the Design Professional and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other Contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

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

13. INDEMNIFICATION AND INSURANCE.

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

13.2. The Contractor's obligation to indemnify and defend the

owner under Paragraph 13.1 of this contract shall not be limited in any way by the agreed upon contract price as shown in this contract or the Contractor's limit of, or lack of, sufficient insurance protection.

13.3. Contractor shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in Exhibit C to the Agreement. Further, the Contractor shall at all times comply with all of the terms, conditions, requirements and obligations set forth under Exhibit C.

14. COMPLIANCE WITH LAWS.

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

15. CLEANUP AND PROTECTIONS.

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

15.2. Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Contractor from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Contractor to the condition equal to that existing at the time of Contractor's commencement of the Work.

16. ASSIGNMENT.

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

17. PERMITS, LICENSES AND TAXES.

17.1 Pursuant to Section 218.80, F.S., Owner will pay for all City of Naples permits and fees, including license fees, permit fees, impact fees or inspection fees applicable to the work through an internal budget transfer(s). Contractor is not responsible for paying for permits issued by the City of Naples, but is responsible for acquiring all permits. Owner may require the Contractor to deliver internal budget transfer documents to applicable City of Naples' agencies when the Contractor is acquiring permits.

17.2 All permits, fees and licenses necessary for the prosecution of the Work which are not issued by the City of Naples shall be acquired and paid for by the Contractor.

17.3. Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work.

18. TERMINATION FOR DEFAULT.

18.1. Contractor shall be considered in material default of the Agreement and such default shall be considered cause for Owner to terminate the Agreement, in whole or in part, as further set forth in this Section, if Contractor: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by the Owner or the Design Professional or as provided for in the approved Progress Schedule; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; or (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) materially breaches any other provision of the Contract Documents.

18.2. Owner shall notify Contractor in writing of Contractor's default(s). If Owner determines that Contractor has not remedied and cured the default(s) within seven (7) calendar days following receipt by Contractor of said written notice, then Owner, at its option, without releasing or waiving its rights and remedies against the Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Contractor's right to proceed under the Agreement, in whole or in

part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Contractor, take assignments of any of Contractor's subcontracts and purchase orders, and complete all or any portion of Contractor's Work by whatever means, method or agency which Owner, in its sole discretion, may choose.

18.3. If Owner deems any of the foregoing remedies necessary, Contractor agrees that it shall not be entitled to receive any further payments hereunder until after the Project is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including Design Professional and attorneys' fees) or damages incurred by Owner incident to such completion, shall be deducted from the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, Contractor agrees to pay promptly to Owner on demand the full amount of such excess, including costs of collection, attorneys' fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by the Owner to complete the Work, such excess shall be paid to the Contractor. The amount to be paid to the Contractor or Owner, as the case may be, shall be approved by the Design Professional, upon application, and this obligation for payment shall survive termination of the Agreement.

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

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

19. TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION.

19.1. Owner shall have the right to terminate this Agreement

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

19.2. Owner shall have the right to suspend all or any portions of the Work upon giving Contractor not less than two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Contractor's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in the Contract Documents. In no event shall the Contractor be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds six (6) months, the Contractor shall have the right to terminate the Agreement with respect to that portion of the Work which is subject to the ordered suspension.

20. COMPLETION.

20.1. When the entire Work (or any portion thereof designated in writing by Owner) is ready for its intended use, Contractor shall notify Owner and Design Professional in writing that the entire Work (or such designated portion) is substantially complete and request that Design Professional issue a Certificate of Completion (substantial or final Certificate of Completion). Within a reasonable time thereafter, Owner, Contractor and Design Professional shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If Owner and Design Professional do not consider the Work (or designated portion) substantially complete, Design Professional shall notify Contractor in writing giving the reasons therefor. If Owner and Design Professional consider the Work (or designated portion) substantially complete, Design Professional shall prepare and deliver to Contractor a Certificate of Completion (substantial or final Certificate of Completion) which shall fix the date of Substantial Completion for the entire Work (or designated portion thereof) and include a tentative punchlist of items to be completed or corrected by Contractor before final payment. Owner shall have the right to exclude Contractor from the Work and Project site (or designated portion thereof) after the date of Substantial Completion, but Owner shall allow Contractor reasonable access to complete or correct items on the tentative punchlist.

20.2. Upon receipt of written certification by Contractor that the Work is completed in accordance with the Contract Documents and

is ready for final inspection and acceptance and upon receipt of a final Application for Payment, Design Professional will make such inspection and, if he finds the Work acceptable and fully performed under the Contract Documents, he shall promptly issue a final Certificate for Payment, recommending that, on the basis of his observations and inspections, and the Contractor's certification that the Work has been completed in accordance with the terms and conditions of the Contract Documents, that the entire balance found to be due Contractor is due and payable. Neither the final payment nor the retainage shall become due and payable until Contractor submits:

(1) The Release and Affidavit in the form attached as Exhibit D.

(2) Consent of surety to final payment.

(3) If required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by Owner.

Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though the Design Professional may have issued his recommendations. Unless and until the Owner is completely satisfied, neither the final payment nor the retainage shall become due and payable.

21. WARRANTY.

21.1. Contractor shall obtain and assign to Owner all express warranties given to Contractor or any subcontractors by any materialmen supplying materials, equipment or fixtures to be incorporated into the Project. Contractor warrants to Owner that any materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Contractor further warrants to Owner that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. If, within one (1) year after final completion, any Work is found to be defective or not in conformance with the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner. Contractor shall also be responsible for and pay for replacement or repair of adjacent materials or Work which may be damaged as a result of such replacement or repair. These warranties are in addition to those implied warranties to which Owner is entitled as a matter of law.

22. TESTS AND INSPECTIONS.

22.1. Owner, Design Professional, their respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project site, for their observation, inspection and testing. Contractor shall provide proper, safe conditions for such access. Contractor shall provide Design Professional with timely notice of readiness of the Work for all required inspections, tests or approvals.

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

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

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

22.5. Neither observations nor other actions by the Design Professional nor inspections, tests or approvals by others shall relieve Contractor from Contractor's obligations to perform the Work in accordance with the Contract Documents.

23. DEFECTIVE WORK.

23.1. Work not conforming to the requirements of the Contract

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

23.2. If the Owner or Design Professional consider it necessary or advisable that covered Work be observed by Design Professional or inspected or tested by others, Contractor, at Owner's or Design Professional's request, shall uncover, expose or otherwise make available for observation, inspection or tests as Owner or Design Professional may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Amount and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

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

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

decrease in the Contract Amount. If the Owner accepts such defective Work after final payment, Contractor shall promptly pay Owner an appropriate amount to adequately compensate Owner for its acceptance of the defective Work.

23.5. If Contractor fails, within a reasonable time after the written notice from Owner or Design Professional, to correct defective Work or to remove and replace rejected defective Work as required by Design Professional or Owner, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any of the provisions of the Contract Documents, Owner may, after seven (7) days written notice to Contractor, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, Owner may exclude Contractor from any or all of the Project site, take possession of all or any part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Design Professional and their respective representatives, agents, and employees such access to the Project site as may be necessary to enable Owner to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of Owner in exercising such rights and remedies shall be charged against Contractor, and a Change Order shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect and consequential costs shall include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

24. SUPERVISION AND SUPERINTENDENTS.

24.1. Contractor shall plan, organize, supervise, schedule, monitor, direct and control the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents. Contractor shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without prior written notice to Owner and Design Professional except under extraordinary circumstances. The superintendent shall be employed

by the Contractor and be the Contractor's representative at the Project site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor. Owner shall have the right to direct Contractor to remove and replace its Project superintendent, with or without cause.

25. PROTECTION OF WORK.

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

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

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

26. EMERGENCIES.

26.1. In the event of an emergency affecting the safety or protection of persons or the Work or property at the Project site or adjacent thereto, Contractor, without special instruction or authorization from Owner or Design Professional is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Design Professional written notice within forty-eight (48) hours after the occurrence of the emergency, if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Design Professional determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Contractor fails to provide the forty-eight (48) hour written notice noted above, the Contractor shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract

Time.

27. USE OF PREMISES.

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

28. SAFETY.

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

- 28.1.1. All employees on or about the project site and other persons and/or organizations who may be affected thereby;
- 28.1.2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site; and
- 28.1.3. Other property on Project site or adjacent thereto, including trees, shrubs, walks, pavements, roadways, structures, utilities and any underground structures or improvements not designated for removal, relocation or replacement in the Contract Documents.

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

occurred.

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

29. PROJECT MEETINGS.

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

30. ASSURANCES WITH REGARD TO OWNER'S EMPLOYEES

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

30.2 If Contractor violates the provisions of paragraph 30.1, Contractor shall be required to pay damages to Owner in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee from or on behalf of the Contractor, or an amount equal to the former Elected Officer's or City Managerial Employee's last two (2) years of gross compensation from Owner, whichever is greater.

30.3 For purposes of this section, the terms "Elected Officer" shall mean any member of the City Council and "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director.

31. ASSURANCES WITH REGARD TO THIRD PARTIES

31.1 Contractor agrees not to provide services for compensation to any other party other than Owner on the same subject matter, same project, or scope of services without approval from the City Council of Owner.

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

EXHIBIT B
PUBLIC PAYMENT BOND

Bond No. _____
Contract No. _____

KNOW ALL MEN BY THESE PRESENTS: That _____,
_____, as
Principal, and _____, as
Surety, located at _____,
(Business Address) are held and firmly bound to _____
as Obligees in the sum of _____
(\$ _____) for the payment whereof we bind
ourselves, our heirs, executors, personal representatives,
successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the
____ day of _____, 200__, with Obligees for _____

_____ in accordance with drawings and specifications, which contract is
incorporated by reference and made a part hereof, and is referred to
as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

Promptly makes payment to all claimants as defined in Section
255.05(1), 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, then this
bond is void; otherwise it remains in full force.

Any changes in or under the Contract and compliance or
noncompliance with any formalities connected with the Contract or
the changes do not affect Surety's obligation under this Bond.

The provisions of this bond are subject to the time limitations
of Section 255.05(2). In no event will the Surety be liable in the
aggregate to claimants for more than the penal sum of this Payment
Bond, regardless of the number of suits that may be filed by
claimants.

IN WITNESS WHEREOF, the above parties have executed this
instrument this _____ day of _____ 200__, the name of each
party being affixed and these presents duly signed by its under-
signed representative, pursuant to authority of its governing body.

Signed, sealed and delivered
in the presence of:

PRINCIPAL:

Witnesses as to Principal

By: _____
Name: _____
Its: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day
of _____ 200__, by _____,
as _____ of _____,
a _____ corporation, on behalf of the corporation. He/she
is personally known to me OR has produced _____ as
identification and did (did not) take an oath.

My Commission Expires:

(Signature of Notary)

Name: _____
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of
Commission No.:

ATTEST:

SURETY:

(Printed Name)

(Business Address)

(Authorized Signature)

Witness as to Surety

(Printed Name)

OR

As Attorney in Fact
(Attach Power of Attorney)

Witnesses

(Business Address)

(Printed Name)

(Telephone Number)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day
of _____, 200__, by _____,
as _____ of _____.
Surety, on behalf of Surety. He/She is personally known to me OR
has produced _____ as identification
and who did (did not) take an oath.

My Commission Expires:

(Signature of Notary)

Name: _____
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of

Commission No.:

PUBLIC PERFORMANCE BOND

Bond No. _____
Contract No. _____

KNOW ALL MEN BY THESE PRESENTS: That _____
_____, as Principal, and _____
_____, as Surety, located at _____
_____ (Business Address) are
held and firmly bound to _____, as
Obligee in the sum of _____
(\$ _____) for the payment whereof we bond ourselves, our
heirs, executors, personal representatives, successors and assigns,
jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the
_____ day of _____, 200__, with Obligee for _____

_____ in
accordance with drawings and specifications, which contract is
incorporated by reference and made a part hereof, and is referred to
as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract; and
2. Pays Obligee any and all losses, damages, costs and attorneys' fees that Obligee sustains because of any default by Principal under the Contract, including, but not limited to, all delay damages, whether liquidated or actual, incurred by Obligee; and
3. 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. Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Surety's obligation under this Bond.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specifications referred to therein shall in anywise 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.

This instrument shall be construed in all respects as a common law bond. It is expressly understood that the time provisions and statute of limitations under Section 255.05, Florida Statutes, shall not apply to this bond.

In no event will the Surety be liable in the aggregate to Obligee for more than the penal sum of this Performance Bond regardless of the number of suits that may be filed by Obligee.

IN WITNESS WHEREOF, the above parties have executed this instrument this _____ day of _____, 200__, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered
in the presence of:

PRINCIPAL:

Witnesses as to Principal

By: _____
Name: _____
Its: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me OR has produced _____ as identification and did (did not) take an oath.

My Commission Expires:

(Signature of Notary)

Name: _____

(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of _____

Commission No. _____

ATTEST:

SURETY:

(Printed Name)

(Business Address)

(Authorized Signature)

Witness as to Surety

(Printed Name)

OR

As Attorney in Fact
(Attach Power of Attorney)

Witnesses

(Business Address)

(Printed Name)

(Telephone Number)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 200__, by _____, as _____ of _____. Surety, on behalf of Surety. He/She is personally known to me OR has produced _____ as identification and who did (did not) take an oath.

My Commission Expires:

(Signature of Notary)

Name: _____
(Legibly Printed)

(AFFIX OFFICIAL SEAL) Notary Public, State of _____

Commission No.: _____

EXHIBIT C
INSURANCE REQUIREMENTS

[Note: For Use in Both the Professional Services Agreement and the Construction Contract.]

(1) The amounts and types of insurance coverage shall conform to the following minimum requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents.

(2) The insurance required by this Agreement shall be written for not less than the limits specified herein or required by law, whichever is greater.

(3) Coverages shall be maintained without interruption from the date of commencement of the work until the date of completion and acceptance of the Project by the Owner or as specified in this Agreement, whichever is longer.

(4) Certificates of insurance (3 copies) acceptable to the Owner shall be filed with the Owner within ten (10) calendar days after Notice of Award is received by Contractor. Such certificates shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner.

(5) All insurance coverages of the Contractor shall be primary to any insurance or self insurance program carried by the Owner applicable to this Project.

(6) The acceptance by Owner of any Certificate of Insurance does not constitute approval or agreement by the Owner that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of this Agreement.

(7) Contractor shall require each of its subcontractors to procure and maintain, until the completion of the subcontractor's work, insurance of the types and to the limits specified in this Section unless such insurance requirements for the subcontractor are expressly waived in writing by the Owner.

(8) Should at any time the Contractor not maintain the insurance coverages required herein, the Owner may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the Contractor for such coverages purchased. The Owner shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the Owner to purchase such insurance coverages shall in no way be

construed to be a waiver of any of its rights under the Contract Documents.

(9) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the Work or termination of the Agreement, the Consultant shall furnish to the City, in triplicate, renewal or replacement Certificate(s) of Insurance not later than thirty (30) calendar days prior to the date of their expiration. Failure of the Contractor to provide the City with such renewal certificate(s) shall be considered justification for the City to terminate the Agreement.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

Required by this Agreement?

_____ Yes _____ No

(1) Workers' Compensation and Employers' Liability Insurance shall be maintained by the Contractor during the term of this Agreement for all employees engaged in the work under this Agreement in accordance with the laws of the State of Florida. The amounts of such insurance shall not be less than:

a. Worker's Compensation - Florida Statutory Requirements

b. Employers' Liability

_____ \$100,000 Each Accident
_____ \$500,000 Disease Aggregate
_____ \$100,000 Disease Each Employee
_____ \$1,000,000 Each Accident
_____ \$1,000,000 Disease Aggregate
_____ \$1,000,000 Disease Each Employee

(2) The insurance company shall waive its Rights of Subrogation against the Owner and the policy shall be so endorsed.

(3) United States Longshoreman's and Harborworker's Act coverage shall be maintained where applicable to the completion of the work. (check one)

_____ Applicable _____ Not Applicable

(4) Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work. (check one)

_____ Applicable _____ Not Applicable

COMMERCIAL GENERAL LIABILITY

Required by this Agreement?

Yes No

(1) Commercial General Liability Insurance shall be maintained by the Contractor. Coverage will include, but not be limited to, Bodily Injury, Property Damage, Personal Injury, Contractual Liability for this Agreement, Independent Contractors, Broad Form Property Damage including Completed Operations and Products and Completed Operations Coverage. Products and Completed Operations coverage shall be maintained for a period of not less than five (5) years following the completion and acceptance by the Owner of the work under this Agreement. Limits of Liability shall not be less than the following:

<input type="checkbox"/> General Aggregate	\$ 300,000
<input type="checkbox"/> Products/Completed Operations Aggregate	\$ 300,000
<input type="checkbox"/> Personal and Advertising Injury	\$ 300,000
<input type="checkbox"/> Each Occurrence	\$ 300,000
<input type="checkbox"/> Fire Damage	\$ 50,000
<input type="checkbox"/> General Aggregate	\$ 500,000
<input type="checkbox"/> Products/Completed Operations Aggregate	\$ 500,000
<input type="checkbox"/> Personal and Advertising Injury	\$ 500,000
<input type="checkbox"/> Each Occurrence	\$ 500,000
<input type="checkbox"/> Fire Damage	\$ 50,000
<input checked="" type="checkbox"/> General Aggregate	\$1,000,000
<input checked="" type="checkbox"/> Products/Completed Operations Aggregate	\$1,000,000
<input checked="" type="checkbox"/> Personal and Advertising Injury	\$1,000,000
<input checked="" type="checkbox"/> Each Occurrence	\$1,000,000
<input checked="" type="checkbox"/> Fire Damage	\$ 50,000

(2) The General Aggregate Limit shall apply separately to this Project and the policy shall be endorsed using the following endorsement wording. "This endorsement modifies insurance provided under the following: Commercial General Liability Coverage Part. The General Aggregate Limit under LIMITS OF INSURANCE applies separately to each of your projects away from premises owned by or rented to you."

(3) If the General Liability insurance required herein is issued or renewed on a "claims made" basis, as opposed to the "occurrence" form, the retroactive date for coverage shall be no later than the commencement date of the Project and shall provide that in the event of cancellation or non-renewal the Extended Reporting Period (Discovery Period) for claims shall be no less than three (3) years.

(4) The Owner shall be named as an Additional Insured and the policy shall be endorsed that such coverage shall be primary to any similar coverage carried by the Owner.

(5) Coverage shall be included for explosion, collapse or underground property damage claims.

(6) Watercraft Liability coverage shall be carried at the limits shown above if applicable to the completion of the work under this Agreement. (check one)

Applicable Not Applicable

(7) Aircraft Liability coverage shall be carried at limits of \$2,000,000 each occurrence if applicable to the completion of the work under this Agreement. (check one)

Applicable Not Applicable

PROPERTY INSURANCE - BUILDERS RISK

(1) Property Insurance - Builders Risk coverage shall be carried by the Owner if applicable. (check one)

Applicable Not Applicable

(2) The Owner shall purchase and maintain in a company or companies lawfully authorized to do business in the State of Florida, in Collier County, and the City of Naples, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors, Sub-subcontractors and Material Suppliers in the Work.

(3) Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, wind and hail, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and, at the Owner's option, shall cover reasonable

compensation for Professional's services and expenses required as a result of such insured loss. At the Owner's option, flood insurance will also be purchased.

(4) The property insurance provided by the Owner requires minimum deductibles and the Contractor shall pay costs not covered by the deductibles. The responsibility of the Contractor for any deductible associated with the all-risk policy described above shall be limited to a maximum of \$1,000 for each occurrence unless higher deductibles are identified in Exhibit C of the Contract Documents. The responsibility of the Contractor for any deductible associated with the flood insurance identified herein, if purchased by the Owner, shall be limited to a maximum of \$1,000 for each occurrence unless higher deductibles are identified in Exhibit C of the Contract Documents.

(5) This property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

(6) Boiler and Machinery Insurance. The Owner shall have the option of purchasing and maintaining boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. If purchased this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work.

(7) Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Professional, Professional's consultants, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this exhibit or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The policies shall provide waivers of subrogation by endorsement or otherwise.

(8) A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear.

(9) If Builders Risk coverage is applicable the Contractor shall be responsible for the following maximum deductibles per occurrence per paragraph (3) above. (check one if applicable)

All Risk Policy - \$1,000 maximum deductible
 All Risk Policy - Maximum deductible of \$10,000.00
 Flood Policy - \$1,000 maximum deductible
 Flood Policy - Maximum deductible of \$ 10,000.00

AUTOMOBILE LIABILITY INSURANCE

Required by this Agreement? Yes No

(1) Automobile Liability Insurance shall be maintained by the Contractor/Consultant/Professional for the ownership, maintenance or use of any owned, non-owned or hired vehicle with limits of not less than:

Bodily Injury & Property Damage - \$ 500,000
 Bodily Injury & Property Damage - \$1,000,000

(2) The Owner shall be named as an Additional Insured under the policy.

UMBRELLA LIABILITY

(1) Umbrella Liability may be maintained as part of the liability insurance of the Contractor and, if so, such policy shall be excess of the Employers' Liability, Commercial General Liability and Automobile Liability coverages required herein and shall include all coverages on a "following form" basis.

(2) The policy shall contain wording to the effect that, in the event of the exhaustion of any underlying limit due to the payment of claims, the Umbrella policy will "drop down" to apply as primary insurance.

(3) The General Aggregate limit, if applicable, shall apply separately to this project and the policy shall be so endorsed.

EXHIBIT D
RELEASE AND AFFIDAVIT

COUNTY OF COLLIER)

STATE OF FLORIDA)

Before me, the undersigned authority, personally appeared _____, who after being duly sworn, deposes and says:

(1) In accordance with the Contract Documents and in consideration of \$_____ paid, _____ ("Contractor") releases and waives for itself and its subcontractors, materialmen, successors and assigns, all claims demands, damages, costs and expenses, whether in contract or in tort, against the City Council for the City of Naples, Florida, relating in any way to the performance of the Agreement between Contractor and Owner, dated _____, 200__, for the period from _____ to _____.

(2) Contractor certifies for itself and its subcontractors, materialmen, successors and assigns, that all charges for labor, materials, supplies, lands, licenses and other expenses for which Owner might be sued or for which a lien or a demand against any payment bond might be filed, have been fully satisfied and paid.

(3) Contractor agrees to indemnify, defend and save harmless Owner from all demands or suits, actions, claims of liens or other charges filed or asserted against the Owner arising out of the performance by Contractor of the Work covered by this Release and Affidavit.

(4) This Release and Affidavit is given in connection with Contractor's [monthly/final] Application for Payment No._____.

CONTRACTOR:

By:

Its: _____ President

Date: _____

Witnesses

[Corporate Seal]

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ as identification and did (did not) take an oath.

My Commission Expires: _____

(Signature of Notary)

Name: _____
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of _____

Commission No.: _____

EXHIBIT E
FORM OF CONTRACT APPLICATION FOR PAYMENT

[INSERT AIA FORM OF PAYMENT APPLICATION
AND SCHEDULE OF VALUES]

EXHIBIT F
CHANGE ORDER

CHANGE ORDER NO. _____

CONTRACT NO. _____

TO: _____

DATE: _____

PROJECT NAME: _____

PROJECT NO.: _____

Under our AGREEMENT dated _____, 200__.

You hereby are authorized and directed to make the following change(s) in accordance with terms and conditions of the Agreement:

FOR THE (Additive) (Deductive) Sum of: _____
_____ (\$ _____).

Original Agreement Amount \$ _____

Sum of Previous Changes \$ _____

This Change Order (Add) (Deduct) \$ _____

Present Agreement Amount \$ _____

The time for completion shall be (increased/decreased) by _____ calendar days due to this Change Order. Accordingly, the Contract Time is now _____ (_____) calendar days. The substantial completion date is _____ and the final completion date is _____. Your acceptance of this Change Order shall constitute a modification to our Agreement and will be performed subject to all the same terms and conditions as contained in our Agreement indicated above, as fully as if the same were repeated in this acceptance. The adjustment, if any, to the Agreement shall constitute a full and final settlement of any and all claims arising out of or related to the change set forth herein, including claims for impact and delay costs.

Accepted: _____, 200__

CONTRACTOR:

OWNER:

CITY OF NAPLES, FLORIDA

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

DESIGN PROFESSIONAL:

By: _____
Printed Name: _____
Title: _____

EXHIBIT G
SUPPLEMENTAL TERMS AND CONDITIONS

1. Change Orders. Notwithstanding anything in the Contract Documents to the contrary, Change Orders may be approved by the City Manager or his designee provided that the change (or the sum of the changes):
 - (i) amounts to ten percent (10%) or less of the original Contract Amount approved by the City Council of the City of Naples; and
 - (ii) does not exceed Fifty Thousand Dollars (\$50,000.00).