

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of:

- .1 The Project Manual containing the Bidding Documents, Bonds, Affidavits, Compliance Forms, Statements, Insurance Requirements and Documents, the Contract between Authority and Contractor (herein referred to as the Contract), Conditions of the Contract (General Conditions), General Requirements and other Requirements), Reports, and Specifications.
- .2 The Drawings.
- .3 All Addenda issued prior to, and all Modifications issued after, execution of the Contract.
- .4 Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Design Professional.

1.1.2 THE CONTRACT

- .1 The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated contract between the parties hereto and supersedes prior negotiations, representations or contracts, either written or oral. The parties will not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.
- .2 No changes, amendments or modifications of any of the terms or conditions of the Contract will be valid unless reduced to writing and signed by both parties. The Contract may be amended or modified only by a Modification. Except as provided in Paragraph 3.18, nothing contained in the Contract Documents will be construed to create any contractual relationship (1) between the Design Professionals and the Contractor, (2) between the Authority or the Design Professional and a Subcontractor or Sub-Subcontractor, (3) between the Authority and the Design Professional, or (4) between any persons or entities other than the Authority and the Contractor. This Contract will be construed in accordance with the laws of the State of Florida. In any action initiated by one party against the other, venue will lie in Hillsborough County, Florida. The Design Professional will, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Design Professional's duties.

- a. The Contractor will not assign, transfer, convey or otherwise dispose of the Contract or its right, title or interest in it without previous consent of the Owner which consent will not be unreasonably withheld. Owner's consent to any assignment will not relieve the Contractor of any of its contracts, responsibilities, or obligations under this Contract, and the Contractor will be and remain as fully responsible and liable for the defaults, acts, and omissions of Contractor's assignees and subcontractors arising in connection with the performance of this Contract.
- b. Subject to the limitations upon assignment and transfer herein contained, this Contract will be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns the work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.3 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.4 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.5 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.6 THE PROJECT MANUAL

The Project Manual is the volume(s) usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents must be signed in not less than duplicate by the Owner and Contractor as provided in the Contract.

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one will be as binding as if required by all; performance by the Contractor will be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

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

1.2.4.1 The Contractor and all Subcontractors will refer to all of the Drawings, including those showing primarily the Work of the mechanical, electrical and other specialized trades, and to all of the Sections of the Specifications, and will perform all work reasonably inferable therefrom as being necessary to produce the indicated results.

1.2.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.6 If Work is required by the Drawings and Specifications in a manner which makes it impossible to produce first class Work, or should discrepancies appear among the Contract Documents, the Contractor will request an interpretation before proceeding with the Work. If the Contractor fails to make such a request, no excuse will thereafter be entertained for failure to carry out the Work in a satisfactory manner. Should conflict occur in or between the Drawings and Specifications, the Contractor is deemed to have estimated the more expensive way of doing the Work unless Contractor will have asked for and obtained a written decision before submission of Contractor's Bid as to which method or materials will be required.

1.2.7 All Work mentioned or indicated in the Contract Documents will be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such construction is not in the contract. In the event of any conflict(s) among the Contract Documents, the precedence in resolving such conflict(s) will be as follows:

- .1 General Requirements will govern over General Conditions.
- .2 General Conditions will govern over Technical Specifications.
- .3 Technical Specifications will govern over Drawings.
- .4 Schedules will govern over Drawings.
- .5 Large-Scale Drawings will govern over smaller scale Drawings.
- .6 Greater quantities will govern over lesser.
- .7 Higher quality, as adjudged by the Design Professional, governs over lesser.

(The above precedence's are in numerical order and they will be construed to mean the order of precedence.)

1.2.8 All indications or notations which apply to one of a number of similar situations, materials or processes will be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

1.2.9 Where codes, standards, requirements and publications of public and private bodies are referred to in the Specifications, references will be understood to be the latest edition, including all amendments thereto, in effect on the date of receiving bids, except where otherwise indicated.

1.2.10 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding Work and of the construction of the Project generally.

1.2.11 All manufactured articles, materials, and equipment will be applied, installed, connected, erected, started-up, tested, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

1.2.12 The Mechanical, Electrical and Fire Protection Drawings are diagrammatic only and are not intended to show the alignment, exact physical locations or configurations of such Work. Such Work will be installed, without additional cost to the Owner, to clear all obstructions, permit proper clearances for the Work of other trades, and present an orderly appearance where exposed. Prior to beginning such Work, the Contractor will prepare coordination drawings and complete detailed layout drawings showing the exact alignment, physical location and configuration of the Mechanical, Electrical and Fire Protection installations and demonstrating to the Design Professional's satisfaction, that the installations will comply with the preceding sentence. Coordination drawings and complete detailed layout drawings will be submitted to the Design Professional for Design Professional's review prior to the commencement of the Work.

1.2.13 Exact locations of fixtures and outlets will be obtained from the Design Professional as provided in Subparagraph 3.2.5 before the Work is roughed-in. Work installed without such information from the Design Professional will be relocated at the Contractor's expense.

1.2.14 Test boring or soil test information included with the Contract Documents or otherwise made available to the Contractor was obtained by the Design Professional in the design of the Project or Work. The Design Professional does not warrant such information to the Contractor as an accurate (an exact) indication but as an approximate indication of subsurface conditions, and no claim for extra cost or extension of time resulting from reliance by the Contractor on such information will be allowed.

1.2.15 Where the Work is to fit with existing conditions or construction not included in this Contract, the Contractor will fully and completely join the Work with such conditions or construction, unless otherwise specified.

1.3 **OWNERSHIP AND USE OF DESIGN PROFESSIONAL'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

1.3.1 All Drawings, Specifications and other documents thereof furnished by the Design Professional are and will remain the property of the Owner. The Drawings, Specifications and other documents prepared by the Design Professional are instruments of the Design Professional's service through which the work to be executed by the Contractor is described. The Contractor may retain one Contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier will own or claim a copyright in the Drawings, Specifications and other documents prepared by the Design Professional, and unless otherwise indicated, the Design Professional will be deemed the author of them and will retain all common law, statutory, copyright and other reserved rights. All copies of them, except the Contractor's record set, will be returned or suitably accounted for to the Design Professional, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Design Professional, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Design Professional appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license will bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Design Professional. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Design Professional's copyright or other reserved rights.

1.4 **CAPITALIZATION**

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published.

1.5 INTERPRETATION

1.5.1 In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2 OWNER

2.1 DEFINITION

2.1.1 The Owner is the Hillsborough County Aviation Authority (HCAA) Contract and is referred to throughout the Contract Documents as if singular in number. The term “Owner” means HCAA or the Owner’s authorized representative.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner will make available Record Documents and Drawings pertaining to the existing buildings and/or facilities relative to this Project. The Owner does not warrant the accuracy and completeness of such Record Documents and Drawings and they are not a part of the Contract Documents.

2.2.2 Information or services required of the Owner will be furnished by the Owner with reasonable promptness after receipt from the Contractor of a written request for such information or services.

2.2.3 The Contractor will be furnished free of charge six reproducible copies of the Drawings and conformed Project Manuals. Additional sets will be furnished at the cost of reproduction, postage and handling.

2.2.4 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), and Article 9 (Payments and Completion).

2.3 OWNER’S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 11.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, the Design Professional, or other authorized representatives by written order signed personally may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work will not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

2.4 OWNER’S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-calendar day period after receipt of written notice from the Owner to begin and prosecute correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order will be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Design Professional’s additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor will pay the difference to the Owner.

2.5 **PERSONAL LIABILITY OF PUBLIC OFFICIALS.** In carrying out any of the Contract provisions or in exercising any power or authority granted to it by this Contract, there will be no liability upon the Design Professional, its authorized representatives, or any officials of the Owner either personally or as an official of the Owner. It is understood that in such matters they act solely as agents and representatives of the Owner.

ARTICLE 3 CONTRACTOR

3.1 DEFINITION

3.1.1 The Contractor is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Prior to starting the Work, and at frequent intervals during the process thereof, the Contractor will carefully study and compare the Contract Documents with each other and with the information furnished by the Owner pursuant to Paragraph 2.2.2 and will at once report to the Design Professional, any error, inconsistency or omission the Contractor may discover. Any necessary change will be ordered as provided in Article 7, **CHANGES IN THE WORK**, subject to the requirements of Paragraph 1.2 and other provisions of the Contract Documents.

3.2.1.1 If the Contractor proceeds with the Work without such notice to the Design Professional, having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents, the Contractor could have discovered such, the Contractor will bear all costs arising therefrom.

3.2.2 The Contractor will take field measurements and verify field conditions and will carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered will be reported to the Design Professional at once.

3.2.3 The Contractor will perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.2.4 The Contractor will give the Design Professional timely notice of all additional Drawings, Specifications, or instructions required to define the Work in greater detail, or to permit the progress of the Work.

3.2.5 The Contractor will not proceed with any Work not clearly and consistently defined in detail in the Contract Documents, but will request additional drawings or instructions from the Design Professional as provided in Subparagraph 3.2.4. If the Contractor proceeds with such Work without obtaining further Drawings, Specifications or instructions, the Contractor will correct Work incorrectly done at the Contractor's own expense.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor will supervise and direct the Work, using the Contractor's best skill and attention. The Contractor will be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

3.3.2 The Contractor will be responsible to the Owner for the acts and omissions of all entities or persons performing or supplying the Work under this Contract.

3.3.3 The Contractor will not be relieved of obligations to performing the Work in accordance with the Contract Documents either by activities or duties of the Design Professional or Owner in the administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.3.4 The Contractor will be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.3.5 All Work by the Contractor will be performed in a workmanlike manner, satisfactory to the Design Professional and the Owner. The Contractor will provide adequate supervision and inspections to assure competent performance of the Work.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor will provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The word "provide" will mean furnish and install complete, including connections, unless otherwise specified.

3.4.2 The Contractor will enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor will not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.5 WARRANTY

3.5.1 The warranty provided in this Paragraph 3.5 will be in addition to and not in limitation of any other warranty provided by the Contract Documents or otherwise prescribed by Law.

3.5.2 All defective Work appearing within one year of the date of Substantial Completion of the whole Work will be promptly corrected by the Contractor at the Contractor's own cost.

3.5.3. The Contractor warrants that the materials and equipment furnished under the Contract will be new and of recent manufacture unless otherwise specified, and that all Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

3.5.4 The Contractor will be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. The Design Professional may require the Contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, report of studies by qualified experts, or other evidence, which, in the opinion of the Design Professional, would lead to a reasonable certainty that any material used, or proposed to be used in the Work meets the requirements of the Contract Documents.

3.5.4.1 All such data will be furnished at the Contractor's expense. This provision will not require the Contractor to pay for periodic testing of different batches of the same material, unless such testing is specifically required by the Contract Documents to be performed at the Contractor's expense.

3.5.5 In all cases in which a manufacturer's name, trade name or other proprietary designation is used in connection with materials or articles to be furnished under this Contract, whether or not the phrase "or equal" is used after such name, the Contractor will furnish the product of the named manufacturer(s) without substitution, unless a written request for a substitution has been submitted by the Contractor, and approved by the Design Professional as provided in Subparagraph 3.5.4. Refer to Section 01605 – PRODUCTS AND SUBSTITUTIONS for additional requirements.

3.5.6 If the Contractor proposes to use a material which, while suitable for the intended use, deviates in any way from the detailed requirements of the Contract Documents, the Contractor will inform the Design Professional in writing of the nature of such deviations at the time the material is submitted for approval, and will request written approval of the deviation from the requirements of the Contract Documents.

3.5.7 In requesting approval of deviations or substitutions, the Contractor will provide, upon request, evidence leading to a reasonable certainty that the proposed substitution or deviation will provide a quality or result at least equal to that otherwise attainable. If, in the opinion of the Design Professional, the evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty, the Design Professional may reject such substitution or deviation without further investigation.

3.5.8 The Contract Documents are intended to produce a structure of consistent character and quality of design. All components of the structure including visible items of mechanical and electrical equipment have been selected to have a coordinated design in relation to the overall appearance and function of the Project. The Design Professional will judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Design Professional will not approve as equal to the materials specified, proposed substitutes which, in the Design Professional's opinion, would be out of character, obtrusive, or otherwise inconsistent with the character or quality of design of the Project. In order to permit coordinated design of color and finishes, the Contractor will, if required by the Design Professional, furnish the substituted material in any color, finish, texture, or pattern which would have been available from the manufacturer originally specified, at no additional cost to the Owner.

3.5.9 Any additional cost, or any loss or damage arising from the substitute of any material or any method for those originally specified will be borne by the Contractor, notwithstanding approval or acceptance of such substitution by the Owner or the Design Professional, unless such substitution was made at the written request or direction of the Owner or the Design Professional.

3.5.10 The Contractor will procure and deliver to the Design Professional, prior to Final Payment, all special warranties required by the Contract Documents. Delivery by the Contractor will constitute the Contractor's guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions. Refer to Sections 01700 – PROJECT CLOSEOUT and 01740 – WARRANTIES for additional requirements.

3.5.11 The warranties set out herein are not in lieu of any other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose.

3.6 TAXES

3.6.1 The Contractor will pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.6.2 Pursuant to Sales and Use Tax Law, Chapter 212, Florida Statutes, the Hillsborough County Aviation Authority is exempt from the payment of sales tax. The Hillsborough County Aviation Authority Certificate Number is 85-8013883484C-4. All goods and services performed by subcontractor (sub-subcontractors) or by suppliers are not exempt from State Sales Tax. All work performed by subcontractors for the Contractor and all supplies provided to the subcontractor or Contractor are not exempt from State Sales Tax. All questions regarding the State of Florida Sales and Use Tax Law should be referred to the State of Florida Department of Revenue, Tallahassee, Florida.

3.7 PERMITS, FEES AND NOTICES

3.7.1 The Contractor will secure and pay for all necessary and required permits and licenses including, but not limited to, batch plant permit(s), building permit(s), and for all other permits and for all other fees, charges, taxes, licenses and inspections necessary for proper execution of the Contract and which are legally required when Bids are received. The Contractor will secure and pay for all Certificates of Inspection and of Occupancy that may be required by authorities having jurisdiction over Work. No extension of time for completion will be granted. The City of Tampa has jurisdiction over this Work and all appropriate site, building and electrical permits, etc. will have to be obtained by the Contractor. In addition, appropriate Certificates of Inspection and Occupancy will be obtained from the City of Tampa.

3.7.2 The Contractor will fully comply with all applicable federal, state, county, municipal or other governmental laws, executive orders, wage, hour and labor, equal employment opportunity, disadvantaged business enterprises, pollution control, and environmental regulations, applicable national and local codes, Hillsborough County Aviation Authority Rules and Regulations and that the Contractor will obtain all necessary permits, pay all required fees and taxes, and otherwise perform these services in a legal manner. The Contractor will indemnify and hold Owner harmless from any fees, damages, fines or costs of any kind arising out of Contractor's failure to comply with such governmental regulations. The Contractor will give all notices necessary and incidental to the due and lawful prosecution of the Work so as not to delay the completion of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor will promptly notify the Design Professional and Owner in writing, and necessary changes will be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Design Professional and Owner, the Contractor will assume full responsibility for such Work and will bear the attributable costs.

3.7.5 The Contractor will keep fully informed of all Federal and State Laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct of the Work. The Contractor will at all times observe and comply with all such laws, ordinances, regulations, orders and decrees; and will protect and indemnify the Owner and all Owner's officers, agents, or servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by the Contractor or the Contractor's employees.

3.8 ALLOWANCES

3.8.1 The Contractor will include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances will be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor will not be required to employ persons or entities against which the Contractor makes reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

- .1 Allowances will cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts will be included in the allowances;
- .3 Whenever costs are more than or less than allowances, the Contract Sum will be adjusted accordingly by Change Order. The amount of the Change Order will reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.1 and (2) changes in Contractor's costs under Clause 3.8.2.2.

3.9 SUPERINTENDENT

3.9.1 The Contractor will employ a competent, full-time Project Management Team reasonably acceptable to the Owner and the Design Professional, consisting of at least one Field Supervisor and necessary representatives who will be in attendance at the Project Site full time during the progress of the Work until the date of Substantial Completion of the whole Work, or for such additional time thereafter as the Owner may determine to be necessary for the expedition completion of the Work.

3.9.1.1 The names and qualifications of this Team for this Work will be submitted as part of the Bidder's Qualification Form. They will have a minimum of five years of experience on similar projects of equal difficulty.

3.9.1.2 The Owner will not recognize any subcontractor on the Work. The Contractor will at all times when Work is in progress be represented either in person, by a qualified superintendent, or by other designated, qualified representative who is duly authorized to receive and execute orders of the Owner or the Design Professional.

3.9.1.3 The Team will each have full authority to act in the Contractor's behalf. It is agreed and understood that, if requested in writing by the Owner or the Design Professional, the Contractor will replace any member of the Team with another meeting the required qualifications within three calendar days of the receipt of the request if the Team member is found to be unsatisfactory to the Owner or the Design Professional for whatever reason. The Project Management Team will represent the Contractor, and communications given to the Project Management Team will be as binding as if given to the Contractor. Important communications will be similarly confirmed on written request for each case. Should the Owner or the Design Professional find any person(s) employed on the Project to be incompetent, unfit, or otherwise objectionable for its duties, the Contractor will immediately cause the employee to be dismissed and said employee will not be re-employed on this Project without written consent of the Owner or the Design Professional.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor will submit Preliminary and CPM (or Bar Chart) Construction Schedules in accordance with requirements under Section 01315 – SCHEDULES, PHASING. The schedule will not exceed time limits current under the Contract Documents. The schedule will be revised at appropriate intervals as required by the conditions of the Work and Project, and will be related to the entire Project to the extent required by the Contract Documents, and will provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor will prepare and keep current, for the Design Professional's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Design Professional reasonable time to review submittals.

3.10.3 The Contractor's performance will conform to the most recent schedules.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor will maintain at the site for the Owner one as-built set of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These will be available to the Design Professional and Owner and will be delivered to the Design Professional for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Design Professional is subject to the limitations of Subparagraph 4.2.7.

3.12.5 The Contractor will review, approve and submit to the Design Professional Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

3.12.6 The Contractor will perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Design Professional. Such Work will be in accordance with approved submittals.

3.12.7 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor thereby represents that the Contractor has determined and verified all dimensions, qualities, field dimensions, relations to existing work, coordination with work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data, Samples, or similar submittals and verification of compliance with all the requirements of the Contract Documents. The accuracy of such information is the responsibility of the Contractor. In reviewing Shop Drawings, Product Data, Samples, and similar submittals, the Design Professional will be entitled to rely upon the Contractor's representation that such information is correct and accurate.

3.12.8 The Contractor will not be relieved of responsibility for deviations from requirements of the Contract Documents by the Design Professional's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Design Professional in writing of such deviation at the time of submittal and the Design Professional has given written approval to the specific deviation. The Contractor will not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Design Professional's approval thereof.

3.12.9 The Contractor will direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Design Professional on previous submittals. Unless such written notice has been given, the Design Professional's approval of a resubmitted Shop Drawing, Product Data, Sample, or similar submittals will not constitute approval of any changes not requested on the prior submittal.

3.12.10 Informational submittals upon which the Design Professional is not expected to take responsive action may be so identified in the Contract Documents

3.12.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Design Professional will be entitled to rely upon such certifications, and the Design Professional will not be required to make any independent examination with respect thereto.

3.12.12 The Contractor will keep one clean copy of each submittal brochure and each shop drawing, bearing the Design Professional's review stamp, at the Job Site.

3.12.13 The Design Professional's review is only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. The Contractor is responsible for dimensions to be confirmed and correlated at the Job Site, for information processes or to techniques of construction, and for coordination of the Work of all trades.

3.12.14 Burden-of-Proof that products, materials, shop drawings, samples and submittals comply with the Contract Documents in every respect and that any substitutions, variations, deviations or modifications to exactly what is specified will, in fact, work well in coordination and harmony, and will serve the intended purpose, will rest entirely with the Contractor. It will not be the Design Professional's responsibility to have the Burden-of-Proof to prove the contrary.

3.12.15 Submittals, requisitions, requests for interpretation, shop drawings and other items received by the Design Professional on Friday, Saturday, Sunday, on any normally recognized holiday, or on a day preceding such a holiday will be considered received on the first working day (except Friday) which follows.

3.12.16 Owner's date stamp of receipt will evidence date of receipt, modified per Paragraph 3.12.15 above. Date indicated on Owner's transmittal letter or transmittal form will be considered as date returned to Contractor.

3.12.17 Refer to Section 01340 – SHOP DRAWINGS, PRODUCT DATA AND SAMPLES for additional requirements.

3.13 USE OF SITE

3.13.1 The right of possession of the premises and the improvements made thereon by the Contractor will remain at all times with the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents.

3.13.1.1 The Contractor will confine the Contractor's apparatus; the storage of materials and the operations of the Contractor's personnel to limits indicated by law, ordinances, the Contract Documents and permits and/or directions of the Design Professional and will not unreasonably encumber the premises with the Contractor's materials. The Owner will not be liable to the Contractor, the Subcontractors, their employees or anyone else with respect to the conditions of the premises.

3.13.1.2 Material will be arranged and maintained in an orderly manner with use of walks, drives, roads and entrances unencumbered. Store, place and handle material and equipment delivered to the Project Site so as to preclude inclusion of foreign substances or causing of discoloration. Pile neatly and compactly and barricade to protect public from injury. Protect material as required to prevent damage from weather or ground. Should it be necessary to move material at any time, or move sheds or storage platforms, the Contractor will move them as and when required at no additional cost to the Owner.

3.13.1.3 The Owner assumes no responsibility for stored materials stored in building or on the Site. The Contractor will assume full responsibility for damage due to storing of materials. Repairing of areas used for placing of sheds, offices and storage of materials will be performed by the Contractor.

3.14 **CUTTING AND PATCHING**

3.14.1 The Contractor will be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor will not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor will not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent will not be unreasonably withheld. The Contractor will not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.14.3 Refer to Section 01045 – CUTTING AND PATCHING for additional requirements.

3.15 **CLEAN UP**

3.15.1 The Contractor will keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor will remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof will be charged to the Contractor.

3.15.3 Daily Clean-Up: The Contractor will keep the premises free from accumulation of waste materials or rubbish caused by Contractor's operations on a daily basis. In areas used by the public or exposed to public view, the Contractor will keep these areas in such a state of cleanliness so as not to reflect unfavorably upon the "image" of the Owner or any airport authority concerned. In areas near airport operations, the Contractor will keep areas free from materials which could possibly be ingested into an aircraft engine or which could cause damage by being blown by aircraft engine blast effects.

3.15.4 Refer to Sections 01110 – AIRPORT PROJECT PROCEDURES and 01700 – PROJECT CLOSEOUT for additional requirements.

3.16 **ACCESS TO WORK**

3.16.1 The Contractor will provide the Owner and Design Professional access to the Work in preparation and progress wherever located.

3.17 **ROYALTIES AND PATENTS**

3.17.1 The Contractor will pay all royalties and license fees. The Contractor will defend suits or claims for infringement of patent rights and will hold the Owner and Design Professional harmless from loss on account thereof, but will not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor will be responsible for such loss unless such information is promptly furnished to the Design Professional.

3.18 INDEMNIFICATION

3.18.1 In addition to the Contractor's obligation to provide, pay for and maintain insurance as set forth elsewhere in the Contract Documents, the Contractor will indemnify and hold harmless the Design Professional and the Owner and its officers and employees from all suits, actions, damages or claims of any character brought because of any injuries or damage received or sustained by any person, persons or property which in whole or in part arise on account of the operation of the Contractor; or on account of or in consequence of any neglect in safeguarding the Work; or through the use of unacceptable materials in constructing the Work; or because of any act or omission, neglect, or misconduct of said Contractor, its Subcontractors, their officers, employees, agents, servants, or assigns; or from any claims or amounts arising or recovered under the "Workman's Compensation Act", or any other law, ordinance, order or decree; Contractor's indemnity obligation to the Owner is as provided in this Provision notwithstanding any limitation on liability which may otherwise exist under the provisions of the Workers' Compensation Law. To the maximum extent permitted by Florida law, Contractor will indemnify and hold harmless Owner and its officers and employees, from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Contractor and anyone employed or utilized by the Contractor in the performance of this Contract.

3.18.2 In addition to the duty to indemnify and hold harmless Owner, Contractor will have the duty to defend Owner and its officers and employees from all claims, damages, losses, or costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Contractor or anyone employed or utilized by the Contractor in the performance of this Contract. The duty to defend under this section is independent and separate from the duty to indemnify, and the duty to defend exists immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to indemnify and defend will survive the expiration or earlier termination of this Contract until it is determined by final judgment that an action against the Owner or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

3.18.3 Indemnification for Infringement. Contractor will pay all royalty and license fees required for the design and construction of any portion of the Project assigned to it. To the maximum extent permitted by law, Contractor will defend any and all suits or claims for infringement of patent rights and will indemnify and save Owner harmless from all loss or expense on account thereof (including attorney's fees).

3.19 THIRD PARTY BENEFICIARY CLAUSE.

3.19.1 It is specifically agreed between the parties executing the Contract that the provisions of any part of the Contract do not create in the public or any member thereof any rights as a third party beneficiary nor do the provisions of any part of the Contract authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the provisions of the Contract.

3.20 RECORDS AND DOCUMENTS

3.20.1 The Contractor will maintain all records and documents relating to the Contract during the course of the Work and for a period of three years after the date of Final Acceptance. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor will make these records and documents available for inspection to the Owner, at the Contractor's office, at all reasonable times, without direct charge and will make these records and documents available for copying at a reasonable charge. If approved by the Owner, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents. If the Contractor fails to make the records and documents available, the Owner may, after written notice to the Contractor, take such action as may be necessary including the withholding of any further payment. Furthermore, failure to make such records and documents available may be grounds for termination pursuant to Paragraph 13.1.

ARTICLE 4
ADMINISTRATION OF THE CONTRACT

4.1 DESIGN PROFESSIONAL

4.1.1 The Design Professional is referred to throughout the Contract Documents as if singular in number.

- .1 Wherever the term “Design Professional”, appears throughout the Contract Documents, it will mean Hillsborough County Aviation Authority (HCAA or Owner) P.O. Box 22287, Tampa, Florida 33622, Telephone (813) 870-8700, FAX (813) 870-8782, or other Owner’s authorized representative(s).
- .2 Wherever the term “Owner’s Authorized Representative(s)” appears in the Contract Documents, the term will include Hillsborough County Aviation Authority, or other Owner’s authorized representative(s).

4.1.2 In case of termination of employment of the Design Professional, the Owner will appoint an Design Professional against whom the Contractor makes no reasonable objection and whose status under the Contract Documents will be that of the former Design Professional.

4.2 DESIGN PROFESSIONAL’S ADMINISTRATION OF THE CONTRACT

4.2.1 The Design Professional will provide administration of the Contract as described in the Contract Documents, and will be the Owner’s representative (1) during construction, (2) until final payment is due and (3) with the Owner’s concurrence, from time to time during the correction period described in Paragraph 11.2. The Design Professional will advise and consult with the Owner. The Design Professional will have authority to act on behalf of the Owner.

4.2.2 The Design Professional will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Design Professional will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations as an Design Professional, the Design Professional will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

4.2.3 The Design Professional will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor’s responsibility as provided in Paragraph 3.3. The Design Professional will not be responsible for the Contractor’s failure to carry out the Work in accordance with the Contract Document. The Design Professional will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor will endeavor to communicate through the Design Professional. Communications by and with the Design Professional’s consultants will be through the Design Professional. Communications by and with Subcontractors and material suppliers will be through the Contractor. Communications by and with separate contractors will be through the Owner.

4.2.5 Based on the Design Professional’s observations and evaluations of the Contractor’s Applications for Payment, the Design Professional will review and certify the amounts due the Contractor and will approve or disapprove the Application for Payment.

4.2.6 The Design Professional or Owner will have authority to reject Work which does not conform to the Contract Documents. Whenever the Design Professional or Owner considers it necessary or advisable for implementation of the intent of the Contract Documents, the Design Professional or Owner will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 12.5.2 and 12.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Professional or Owner nor a decision made in good faith either to exercise or not to exercise such authority will give rise to a duty or responsibility of the Design Professional or Owner to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 The Design Professional will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents and only to the extent which the Design Professional or Owner believes desirable to protect the Owner's interest. The Design Professional's action will be taken with reasonable promptness, while allowing sufficient time in the Design Professional's professional judgment to permit adequate review, taking into account the time periods set forth in the latest recognized Construction Schedule prepared by the Contractor and reviewed by the Design Professional. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Design Professional's review of the Contractor's submittals will not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Design Professional's review will not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Design Professional's approval of a specific item will not indicate approval of an assembly of which the item is a component.

4.2.8 The Design Professional or Owner will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Design Professional will conduct inspections in conjunction with the Owner to determine the date or dates of Substantial Completion and the date of Final Completion and Acceptance, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will review and certify a final application for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 The Design Professional will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Contractor. The Design Professional's response to such requests will be made with reasonable promptness and within any time limits agreed upon. The Design Professional may, as the Design Professional judges desirable, issue additional drawings or instructions indicating in greater detail the construction or design of the various parts of the Work; such drawings or instructions may be affected by other supplemental instruction or other notice to the Contractor, and provided such drawings or instructions are reasonably consistent with the previously existing Contract Documents, the Work will be executed in accordance with such additional drawings or instructions without additional cost or extension of the Contract Time.

4.2.11 Interpretations and decisions of the Design Professional will be consistent with the intent of and reasonably inferable from the contract documents and will in writing or in the form of drawings. When making such interpretations and decisions, the Design Professional will endeavor to secure faithful performance by both Owner and contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.2.12 The Design Professional's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the contract documents.

4.3 CLAIMS AND DISPUTES

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, and extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims will rest with the party making the Claim.

4.3.1.1 If for any reason the Contractor deems that additional cost or Contract Time is due to the Contractor for Work not clearly provided for in the Contract Documents, or previously authorized changes in the Work, the Contractor will notify the Owner in writing of its intention to claim such additional cost or Contract Time before the Contractor begins the Work on which the Contractor bases the claim. If such notification is not given or the Owner is not afforded proper opportunity by the Contractor for keeping strict account of actual cost or time as required, then the Contractor hereby agrees to waive any claim for such additional cost or Contract Time.

4.3.1.2 Such notice by the Contractor and the fact that the Owner or Design Professional has kept account of the cost or time of the Work will not in any way be construed as proving or substantiating the validity of the claim. When the Work on which the claim for additional cost or Contract Time is based has been completed, the Contractor will, within 21 calendar days, submit Contractor's written claim to the Owner. The failure to give notice as required herein will constitute a waiver of said claim.

4.3.2 Claims arising prior to Final Payment or the earlier termination of the Contract will be referred initially to the Owner for action as provided in Paragraph 4.4.

4.3.3 Claims must be made within 21 calendar days after occurrence of the event giving rise to such claim or within 21 calendar days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. If the Contractor wishes to reserve its rights under this Paragraph, written notice of any event that may give rise to a claim must be given within 21 calendar days of the event, whether or not any impact in money or time has been determined. Claims must be made by written notice. Any change or addition to a previously made claim will be made by timely written notice in accordance with this Paragraph. The failure to give notice as required herein will constitute a waiver of said claim.

4.3.4 Continuing Contract Performance. Pending final resolution of a Claim, unless otherwise agreed in writing, the contractor will proceed diligently with performance of the Contract.

4.3.5 Waiver Of Claims: Final Payment. The making of Final Payment will constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

4.3.6 Claims For Concealed Or Unknown Conditions. Owner will make available to the contractor prior to the bid opening and during the performance of the Work, Record Documents and Drawings pertaining to the existing structures and/or facilities relative to this Project. Record Documents and Drawings will not be considered a part of the Contract Documents. Owner does not warrant the accuracy of such Record Documents and Drawings to the Contractor and the Contractor will be solely responsible for all assumptions made in reliance thereupon. Record Documents and Drawings are not warranted or intended to be complete depictions of existing conditions, nor do they necessarily indicate concealed conditions. The locations of electrical conduit, telephone lines and conduit, computer cables, FAA cables, storm lines, sanitary lines, irrigation lines, gas lines, mechanical apparatus and appurtenances, HVAC piping/ductwork, and plumbing may only appear schematically, if at all, and the actual location of such equipment is in many cases unknown. Contractor will take the foregoing into consideration when preparing its bid, and will not be entitled to any additional compensation on account of concealed conditions except as specifically set forth below.

4.3.6.1 Should the Contractor encounter concealed conditions in an existing structure or below the surface of the ground, not discoverable by a careful inspection and differing materially from conditions ordinarily encountered and generally recognized in or about a site of this type, the Contract Sum will be equitably adjusted by Change Order upon claim by either party, if made before conditions are disturbed and in no event later than 21 calendar days after the first observance of the conditions. Nothing herein is intended to limit or modify the obligations of the Contractor set forth in Section 01545 – UTILITIES.

4.3.6.2 There will be no adjustment of the Contract Sum on account of other costs resulting from topsoil or water conditions including, without limitation, costs on account of delay, administration, operations, temporary construction, cave-in or collapse of excavations, or pumping.

4.3.7 Claims For Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein will be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. Claim will be filed in accordance with the procedure established herein. Anticipated, unanticipated, abnormal or adverse weather conditions will not be the basis of a Claim for additional cost. The Contract Sum will not be increased for any weather related conditions.

4.3.8 Claims For Additional Time.

4.3.8.1 If the Contractor wishes to make claim for all increase in the Contract Time, written notice as provided herein will be given. The Contractor will have the burden of demonstrating the effect of the claimed delay on the Contract Time, and will furnish the Owner with such documentation relating thereto as the Owner will reasonably require. In the case of a continuing delay only one claim is necessary

4.3.8.2 The Contract Time will not be increased for any reasonably anticipated weather related delay. The Owner may consider adverse weather conditions not reasonably anticipated as a basis of a Claim for additional time.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 The Owner will review Claims and may (1) defer any action with respect to all or part of a Claim and request additional information from the Contractor which additional information Contractor will immediately provide to the Owner, or (2) render a decision on all or a part of the Claim. The Owner will notify the parties in writing of the disposition of the Claim.

4.4.1.1 If the Owner decides that the Work relating to such Claim should proceed regardless of the Owner's disposition of such Claim, the Owner will issue to the Contractor a written directive to proceed. The Contractor will proceed as instructed.

4.4.2 Escrow of Bid Documents: The Contractor agrees that all documents relied upon in making or supporting their Bid will be retained in escrow prior to the date the Contract is awarded and preserved and updated during the course of the Work until Final Payment is made. The Owner will have the right to inspect any and all such Bid Documents and to verify that such Bid Documents are properly escrowed prior to the time of the Award of the Contract, or at any time thereafter during the course of the Work.

4.4.2.1 If any Claim is made pursuant to the Contract, the Contractor will provide for the Owner's review, at the Owner's request, all escrowed Bid documents. If the Owner requests to review the escrowed Bid Documents and the Contractor fails to timely provide them or has failed to preserve them, no Claim by the Contractor will be honored by the Owner.

4.4.2.2 If the Contractor contends that such Bid Documents are proprietary or otherwise confidential, the Contractor will so state as to any such documents, will provide them to the Owner as part of the claim process, and will identify all such documents exempted from disclosure under Florida Statutes Section 119.

4.4.2.3 Said escrowed Bid Documents referred to in this Section will be subject to review in the event of any audit. The Owner may require that an appropriate audit be conducted. In the event the audit supports the Contractor's claim, the Owner will pay for the audit. In the event the audit does not support the Contractor's claim, the Contractor will pay for the audit.

4.4.2.4 The Contractor will provide all information and reports requested by the Owner, or any of their duly authorized representatives, or directives issued pursuant thereto, and will permit access, for the purpose of audit and examination to the Contractor's books, records, accounts, documents, papers or other sources of information, and its facilities as may be determined by the Owner to be pertinent to ascertain compliance with this Section. The Contractor will keep all Project accounts and records which fully disclose the amount of the Bid. The accounts and records will be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITIONS

- 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
- 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.
- 5.1.3 The Design Professional or Owner will not recognize any subcontractor on the Work. The Contractor will at all times, when Work is in progress, be represented either in person, by a qualified superintendent, or by other designated, qualified representative who is duly authorized to receive and execute orders of the Owner or Design Professional.

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

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, will furnish in writing to the Owner, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. After due investigation, the Owner will promptly reply to the Contractor in writing stating whether or not the Owner has reasonable objection to any such proposed person or entity. Failure of the Owner to reply promptly will constitute notice of no reasonable objection.

5.2.2 The Owner reserves the right to investigate the prequalification and qualifications and responsibility of proposed or actual subcontractors, and to prohibit same from performing Work on the Project where such investigation, in the judgment of the Owner, reveals that such subcontractors are unqualified and/or non-responsible. The Owner's criteria for such determination may include, without limitation: financial condition, experience, character of workers and equipment, and past performance. The Contractor will not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor will not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3 If the Owner has reasonable objection to any such proposed person or entity, the Contractor will submit a substitute to whom the Owner has no reasonable objection.

5.2.4 The Contractor will not change a Subcontractor, person or entity listed in Contractor's Subcontractors List without permission of the Owner.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate contract, written where legally required for validity, the Contractor will require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner and Design Professional. Each subcontract contract will preserve and protect the rights of the Owner and Design Professional under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and will allow to the Subcontractor, unless specifically provided otherwise in the subcontract contract, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor will require each Subcontractor to enter into similar contracts with Sub-subcontractors. The Contractor will make available to each proposed Subcontractor, prior to the execution of the subcontract contract, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract contract which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNERS RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case will mean the Contractor who executes each separate Owner-Contractor Contract.

6.1.3 The Contractor, with the Owner's assistance, will coordinate each separate contractor with the Work of the Contractor, who will cooperate with them. The Owner will provide for the coordination of the Owner's own forces with the Work of the Contractor, who will cooperate with them. The Contractor will coordinate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor will make any revisions to the construction schedule deemed necessary after a joint review and mutual contract. The construction schedules will then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor will afford the Owner and separate contractor's reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and will connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends, for proper execution or operation upon the Work or any applicable portion thereof, on any other separate contractor, the Owner will give the Contractor written notice of the date when the other contractor will have completed its construction or any applicable portion thereof and the Contractor will have 15 calendar days from the date so specified within which to inspect other contractor's construction or any applicable portion thereof, and to accept said construction or to reject in a written statement to the Owner reciting all discrepancies or defects which affect Contractor's work and, therefore, must be remedied. Upon receipt of such statement, the Design Professional will see that necessary corrections are made and will notify the Contractor when such corrective work is to be complete. The Contractor will have 15 calendar days from the date so specified within which to inspect and report again, in order to determine that discrepancies or defects have been corrected.

6.2.2.1 Failure of the Contractor to inspect and report, as set forth above, will constitute an acceptance of the other contractor's construction or any applicable portion thereof, as fit and proper to receive Contractor's Work, except as to latent defects which may develop in the other separate contractor's construction or any applicable portion thereof, after the execution of the Contractor's work.

6.2.2.2 Upon completion of the other contractor's construction or any applicable portion thereof, the area will be turned over to the Contractor.

6.2.3 Costs caused by delays or defective construction will be borne by the party responsible therefore.

6.2.4 The Contractor will promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5 Should the Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor will, upon due notice by the Owner, settle with such other contractor by contract if other contractor will so settle. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner will notify the Contractor who will defend such proceedings with the cooperation of the Owner and, if any judgment against the Owner arises therefrom, the Contractor will pay or satisfy same to the extent caused by the fault of the Contractor and will reimburse the Owner for all reasonable attorneys' fees and court costs which the Owner has incurred.

6.2.6 The Owner and each separate contractor will have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Owner determines to be just.

ARTICLE 7 CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Supplemental Contract, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article and elsewhere in the Contract Documents.

7.1.1.1 Any Claim for payment of changes in the Work that is not covered by written Change Order will be rejected by the Design Professional. The Contractor, by submitting the Bid, acknowledges and agrees that the Contractor will not be entitled to payment for changes in the Work unless such Work is specifically authorized in writing by the Owner in advance. The terms of this Article may not be waived by the Design Professional or Owner unless such waiver is in writing and makes specific reference to this Article.

7.1.2 A Change Order will be based upon contract among the Owner, Contractor and Design Professional; a Construction Change Directive requires contract by the Owner and Design Professional and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Design Professional alone.

7.1.3 Changes in the Work will be performed under applicable provisions of the Contract Documents, and the Contractor will proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

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

7.1.5 ALTERATION OF WORK AND QUANTITIES. The Owner reserves and will have the right to make such alterations in the Work as may be necessary or desirable to complete the Work originally intended in an acceptable manner. Unless otherwise specified herein, the Owner will be and is hereby authorized to make such alterations in the Work as may increase or decrease the originally awarded Contract Work, provided that the aggregate of such alterations does not change the total Contract cost or the total cost of any major Contract item by more than 25% (total cost being based on the unit prices and estimated quantities in the awarded Contract). Alterations that do not exceed the 25% percent limitation will not invalidate the Contract nor release the Surety, and the Contractor agrees to accept payment for such alterations as if the altered work had been a part of the original Contract. These alterations which are for Work within the general scope of the Contract will be covered by "Change Orders" issued by the Owner. Change Orders for altered work may include extensions of Contract Time where, in the Design Professional's opinion, such extensions are commensurate with the amount and difficulty of added work.

Should the aggregate amount of altered work exceed the 25% percent limitation herein before specified, such excess altered work will be covered by Supplemental Contract. If the Owner and the Contractor are unable to agree on a unit adjustment for any contract item that requires a Supplemental Contract, the Owner reserves the right to terminate the Contract with respect to the item and make other arrangements for its completion.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Owner and signed by the Owner, Contractor and Design Professional, stating their contract upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment in the Contract Sum, if any; and
- .3 the extent of the adjustment in the Contract Time, if any.

7.2.2 Methods used in determining adjustments to the Contract Sum will include those listed in Paragraph 7.3.2.1.

7.2.3 Supplemental Contract. A written contract between the Contractor and the Owner covering (1) work that would increase or decrease the total amount of the awarded Contract, or any major Contract item, by more than 25%, such increased or decreased work being within the scope of the originally awarded Contract; or (2) work that is not within the scope of the originally awarded contract.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Design Professional or Owner and signed by the Owner and Design Professional, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum, and/or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive will be used in order to expedite the Work and avoid or minimize delays in the Work which may affect the Contract Sum or Contract Time. When determined by the Design Professional to be in the Owner's best interest, the Design Professional may, with or without the Contractor's contract, direct or order the Contractor to proceed with Changes in the Work by the issuance of a Construction Change Directive.

7.3.2.1 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment will be based on one of the following methods:

- (a) Mutual acceptance of a lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation;
- (b) By unit prices stated in the Contract Documents or otherwise mutually agreed upon;
- (c) By cost estimated by the Contractor as provided in Paragraph 7.3.3 plus, if applicable, percentage, and accepted by the Design Professional. The Contractor's estimate will become a fixed price which will not be changed by any variation in the actual cost of executing the work covered by the change;
- (d) Cost to be determined in a manner agreed upon by the parties, plus, if applicable, percentage; or
- (e) As provided in Paragraph 7.3.6 by actual cost determined after the Work covered by the change is completed, plus, if applicable, percentage.

7.3.2.2 As used in this Paragraph 7.3, Construction Change Directive's "Cost" will mean the estimated or actual net increase in cost to the Contractor or Subcontractor for performing the Work covered by the change, including actual payments for materials, equipment rentals, expendable items, wages and associated benefits to workers and to supervisors employed full time at the Site where the Work is performed, insurance, bonds, and other provable direct costs, but not including any administrative, accounting or expediting costs, or other indirect or overhead costs, or any wages or benefits of supervisory personnel not assigned full time to the Site, or any amount for profit or fee to the Contractor, Subcontractor, or Sub-subcontractor. Rates for the Contractor and Subcontractor owned equipment will not exceed the rates listed in the Associated Equipment Distributors rental rate book as adjusted to the regional area of the Work under this Contract.

7.3.2.3 "Percentage" will mean an amount to be added to the Cost for overhead and profit and any other expense which is not included in the Cost of the Work covered by the change, as defined above. The maximum percentage for total overhead and profit and any other expense which is not included in the Cost of the Work will be as follows:

- (a) Percentage for the Contractor will be 15% of any net increase of Costs of any Work performed by the Contractor's own forces on-site only.
- (b) Percentage for a Subcontractor will be 10% of any net increase of Cost of any Work performed by the Subcontractor's own forces on-site only plus 5% of any net increase in the Cost of the Work for the Contractor on-site only.

7.3.2.4 When in the reasonable judgment of the Design Professional a series of Construction Change Directives or Change Orders affect a single change, the percentage will be calculated on the cumulative net increase in Cost, if any.

7.3.2.5 Overhead will include the following:

- (a) Supervision wages, timekeepers, watchmen and clerks, hand tools, incidentals, general office expense, and all other expenses not included in "Cost."

7.3.3 Upon request of the Owner or the Design Professional, the Contractor will without cost to the Owner submit to the Design Professional, in such form as the Design Professional may require, an accurate written estimate of the cost of any proposed extra work or change. The estimate will indicate the quantity and unit cost of each item of materials, and the number of hours of work and hourly rate for each class of labor, as well as the description and amounts of all other costs chargeable under the terms of this Article. Unit labor costs for the installation of each item of materials will be shown if required by the Design Professional. The Contractor will promptly revise and resubmit such estimate if the Design Professional determines that it is not in compliance with the requirements of this Article, or that it contains errors of fact or mathematical errors.

7.3.3.1 If required by the Design Professional, in order to establish the exact cost of new Work added or of previously required Work omitted, the Contractor will obtain and furnish to the Design Professional bona fide proposals from recognized suppliers for furnishing any material included in such Work. Such estimates will be furnished promptly so as to occasion no delay in the Work, and will be furnished at the Contractor's expense. The Contractor will state in the estimate any extension of time required for the completion of the Work if the change or extra work is ordered.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor will promptly proceed with the change in the Work involved and advise the Design Professional of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum and/or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract sum and/or Contract Time or the method for determining them. Such agreement will be effective immediately and will be subsequently recorded in/as a Change Order,

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment will be determined by the Design Professional on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a percentage for overhead and profit. In such case, and also under Clause 7.3.2.1(e), the Contractor will keep and present, in such form as the Design Professional may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph will be limited to the following:

1. costs of labor, including social security, old age and unemployment insurance, fringe benefits required by contract or custom, and workers' or worker's compensation insurance;
2. costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
3. rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
4. costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;

7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum will be actual net cost as confirmed by the Design Professional. When both additions and credits covering related Work or substitutions are involved in a change, the percentage for overhead and profit will be figured on the basis of net increase, if any, with, respect to that change.

7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method will be referred to the Design Professional for determination.

7.3.9 When the Owner and Contractor agree with the determination made by the Design Professional concerning the adjustments in the Contract Sum and/or Contract Time, or otherwise reach agreement upon the adjustments, such agreement will be effective immediately and will be subsequently recorded in preparation and execution of an appropriate Change Order.

7.4 **MINOR CHANGES IN THE WORK**

7.4.1 The Design Professional will have authority to order minor changes in the Work not involving adjustment to the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order and will be binding on the Owner and Contractor. The Contractor will carry out such written orders promptly.

ARTICLE 8 TIME

8.1 **DEFINITIONS**

8.1.1 Unless otherwise provided, the Contract Time(s) is the period of time allotted in the Contract Documents for Substantial Completion of the Work or designated portion thereof as defined in Paragraph 8.1.3 including adjustments thereto.

8.1.2 The date of commencement of the Work is the date established in a written Notice to Proceed. Work under this Contract will not commence until the Owner has issued a written Notice to Proceed. The Contractor will begin the Work to be performed under the Contract within ten calendar days of the date set by the Owner in a written Notice to Proceed but, in any event, the Contractor will notify the Design Professional and Owner at least 48 hours in advance of the time actual construction operations will begin. The date will not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 The date of Substantial Completion is the date certified by the Design Professional and Owner in accordance with Paragraph 9.7.

8.1.4 The term "day" as used in the Contract Documents will mean calendar day unless otherwise specifically defined.

8.1.5 The Contractor's plea that insufficient Contract Time was specified will not be a valid reason for extension of Contract Time. No extension of Contract Time for completion will be granted; reference this Article 8.

8.2 **PROGRESS AND COMPLETION**

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Contract the Contractor confirms that the Contract Time is a reasonable period for performing the Work. In the event the Contractor fails to promptly complete the Work herein within the Contract Time(s) provided, liquidated damages will accrue in the amount(s) and manner specified in the Contract.

8.2.2 The Contractor will furnish sufficient forces, construction plant and equipment, and will work such hours, including night shifts, and other overtime operations, as may be necessary to insure prosecution of the Work in accordance with the Construction Schedule, Contractor will take such steps as may be necessary or as may be directed by the Design Professional to improve Contractor's progress by increasing the number of shifts, overtime operations, days of work, and amount of construction plant, as may be required, at no additional cost to the Owner.

8.2.3 Maintenance of Schedule: The Contractor will prosecute the Work with sufficient forces, materials, and equipment to maintain progress in accordance with the Schedule. Should the Work in whole or in part fall behind the Schedule, or should the progress of the Work appear to Design Professional to be inadequate to assure completion on the completion date(s) specified in the Contract, the Contractor will, upon written notice from the Design Professional, take appropriate steps within seven calendar days of such notice to put the Work back on Schedule and meet the specified completion date(s).

8.2.3.1 Should the Contractor fail to institute appropriate measures within seven calendar days, or should the measures taken fail to put the Work back on schedule within 14 calendar days of such notice, the Owner may, but will not be required to, supplement the Contractor's forces, materials and/or equipment with other forces, materials and/or equipment. The cost of such other forces, materials and/or equipment will be deducted by the Owner from sums otherwise owing to the Contractor. The Owner's use of such supplemental forces, materials and/or equipment will not excuse the Contractor from performing all of its obligations under the Contract Documents or relieve the Contractor from liquidated damages. The Contractor will coordinate and work together with such forces, materials and/or equipment.

8.2.3.2 Failure of the Contractor to comply with the requirements under this Provision will be grounds for determination that the Contractor is not prosecuting the Work with such diligence as will insure completion within the time(s) specified and such failure constitutes a material breach of the Contract Documents. Upon such determination, the Owner may terminate the Contractor's right to proceed with the Work, or any separate part thereof, in accordance with Article 13, TERMINATION OR SUSPENSION OF THE CONTRACT.

8.2.4 The Contractor will proceed expeditiously with adequate forces and will achieve Substantial completion within the Contract Time(s).

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 In all cases where the Contractor is delayed, hindered, or obstructed in the execution of the Work, or any part thereof, the Contractor will not be entitled to claim or recover any damages or additional payment from the Owner or Design Professional. Notwithstanding the foregoing, it is the intent of this Contract that in all cases where the Contractor is substantially delayed, hindered, or obstructed in the execution of the Work through no fault of the Contractor and because of conditions beyond the Contractor's control, the Contract Time will be extended by Change Order by such amount of time as conditions, in the judgment of the Design Professional, justify, and such extension of the Contract Time will be the exclusive remedy of the Contractor.

8.3.2 Claims relating to time will be made in accordance with applicable provisions of Paragraph 4.3.

8.3.2.1 Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after that date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the Owner of any of its rights under the Contract.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

9.2.1 Before submitting the first Application for Payment, the Contractor will submit to the Design Professional a Schedule of Values. Refer to Section 01370 – SCHEDULE OF VALUES for additional information.

9.2.1.1 The Schedule of Values will be approved by the Design Professional prior to submitting the initial Application for Payment.

9.2.1.2. The Schedule of Values will be in a form as required by Design Professional to adequately establish costs of the Work and will provide for not less than the following:

Hillsborough County Aviation Authority (HCAA) Project Number 4215 09 – Relocation of the Airport Surveillance Radar (ASR-9).

9.2.1.3 This Schedule of Values will be prepared in such a form and supported by such data to substantiate its accuracy in reflecting the above breakdown for administrative and payment purposes as the Design Professional or Owner may require and will be revised later if found by the Design Professional to be inaccurate. 9.2.1.4 This Schedule of Values, unless objected to by the Design Professional, will be used only as a basis for the Contractor's Application for Payment.

9.2.1.5 Initial Payment Application: The principal administrative actions and submittals which will precede or coincide with submittal of the Contractor's first payment application can be summarized as follows, but not necessarily by way of limitation.

- .1 Listing of subcontractors and principal suppliers and fabricators.
- .2 Schedule of Values.
- .3 Initial recognized CPM (or Bar Chart) Construction Schedule.
- .4 Schedule of submittals.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 The Contractor will, as a condition precedent to the right to receive any monthly payment, submit to the Design Professional an Application for Payment.

9.3.1.1 Scope of Payment: For performance of this Contract, the Owner will make payments in U.S. Dollars to the Contractor in accordance with the Design Professional-approved Schedule of Values, which will be based on the Contract sum amount established by the Contractor in Section 00300 – BID FORM. It is understood that the Contract sum amount to be paid to the Contractor will be totally based on the said amount contained in Section 00300 – BID FORM and made a part of this Contract for the Work actually complete.

9.3.1.1.1 The Contractor will receive and accept compensation provided for in the Contract as full payment for furnishing all materials, for performing all Work under the Contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof, subject to the provisions of Paragraph 11.2.7, herein.

9.3.1.1.2 When the "basis of payment" subsection of a technical specification requires that the Contract sum (Bid Price) includes compensation for certain work or material essential to the item, this same work or material will not also be measured for payment under any other Contract Item which may appear elsewhere in the Contract Documents.

9.3.1.1.3 When the accepted quantities of Work vary from the quantities in Attachment 1 – Bid Tabulation, the Contractor will accept as payment in full, so far as Contract Items are concerned, payment at the original Contract price for the accepted quantities of Work actually completed and accepted. No allowance will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor which results directly from such alterations or indirectly from its unbalanced allocation of overhead and profit among the Contract Items, or from any other cause.

9.3.1.2 On the third calendar day of each month, the Contractor will submit to the Owner three original, executed and notarized copies of an itemized Application for Payment prepared on a form supplied by the Owner and based on the agreed Schedule of Values, supported by such data substantiating the Contractor's right to payment, as the Owner or Design Professional may require, and reflecting retainage for all Work performed through the last calendar day of each month. The Application for Payment will be certified by a person duly authorized in writing to execute contractual instruments on behalf of the Contractor.

9.3.1.2.1 Each Application for Payment will include the Contractor's signed statement, based on the agreed Schedule of Values of the value of the Work. The total payment for each month will be broken down according to the specific items from the Schedule of Values that have been completed/delivered for which payment is requested. All such payments will be commensurate with the actual progress of the Work which must be substantiated and itemized in the Monthly Construction Schedule. Payment will not be made for any Work which cannot be so substantiated. Refer to Section 01315 – SCHEDULES, PHASING.

9.3.1.2.2 All Progress Payments will be subject to correction following the discovery of an error, misrepresentation, or unallowable cost in any previous Application. Approval of such erroneous Application will not in any respect be taken as an admission by the Owner of the amount of Work completed, or the release of the Contractor from any of its responsibility under the Contract.

9.3.1.2.3 No payment will be made when the amount due the Contractor since the last payment amounts to less than five hundred dollars.

9.3.1.2.4 It is understood and agreed that the Contractor will not be entitled to demand or receive partial payment based on quantities of Work in excess of those provided in the Bid or covered by approved Change Orders or Supplemental Contracts. 9.3.1.3 The Contractor's Construction Schedule will be updated on a monthly basis and a copy thereof submitted with each of the Contractor's Applications for Payment. The Design Professional will not recommend for payment by the Owner, an Application for Payment without the Contractor's submission of a recognized Monthly Construction Schedule Update. Further, the Design Professional will not recommend for payment by the Owner, an Application for Payment without satisfactory documentation of material and services purchases scheduled to have been issued during the period of time covered by the Application for Payment. Copies of issued Purchase Orders and Contract (subcontracts) will be considered satisfactory documentation. Refer to Section 01315 – SCHEDULES, PHASING.

9.3.1.3.1 Entries will match current data of the Schedule of Values and Construction Schedule. Listing will include amounts of Change Orders approved by the Owner prior to the last calendar day of the "period of Work" covered by the Application for Payment. Incomplete Applications for Payment will be returned by the Design Professional and without action.

9.3.1.3.2 The Contractor will submit with each Application for Payment, a detailed accounting of the value of Work performed to date by certified DBEs. This accounting will include:

- (a) the names and addresses of DBE firm that has participated on the Contract;
- (b) a description of the Work each named DBE firm has performed; and
- (c) the value of Work performed by each named DBE firm.

9.3.1.3.3. The Design Professional will not recommend for payment by the Owner an Application for Payment without the Contractor's submission of the detailed DBE accounting.

9.3.1.3.4 The Design Professional will approve or disapprove the Contractor's Application for Payment within seven calendar days after the receipt thereof and upon approval, promptly issue to the Owner a Certificate for Payment recommending payment to the Contractor. Upon receipt by the Owner of the approved Certificate for Payment, the Owner will make payment according to the Owner's standard payment procedures following the month in which the Certificate for Payment was submitted. The Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 calendar days from the receipt of each payment the prime contractor receives from the Owner. The prime contractor agrees further to release retainage payments to each subcontractor within 10 calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written notice to the Owner. This clause applies to both W/MBE and non-W/MBE subcontractors. 9.3.1.3.5 The Owner will pay to Contractor 90% of all applications for payment submitted by Contractor to the Design Professional, said applications for payment to represent the value, based on the Contract amount, of the Work satisfactorily performed on the Schedule of Values, less the aggregate of all previous payments. The application for payment will reflect a retainage of 10% of the total amount payable for Work satisfactorily completed to date. The 10% will be deducted and retained by the Owner until Final Payment is made. Any amounts that are the subject of a good-faith dispute, the subject of a claim brought pursuant to Florida Statue Ch. 218, or otherwise the subject of a claim or demand will not be released.

9.3.1.4 In addition, the Owner may withhold or suspend additional payments or portions thereof, to such extent as may be necessary to protect itself from loss on account of:

- (a) Work or execution thereof not performed or not in accordance with the Contract Documents.
- (b) The cost of the Work performed by the Owner, or contracted to others by the Owner, on behalf of the Contractor where said Work or the costs thereof, are identified in the Contract Documents as the responsibility of the Contractor.
- (c) Whether items of Work remain to be corrected or completed following Substantial Completion or Final Acceptance.
- (d) In the event of the Contractor's noncompliance with the Owner's W/M/DBE Policy or failure to meet the prescribed W/M/DBE goal or expectancy set forth in this Contract, or to establish a good faith effort to do so, the Owner will impose such Contract sanctions as the Owner may determine to be appropriate, including but not limited to:
 - 1) Withholding of payments to the Contractor under the Contract until the Contractor complies; and/or
 - 2) Cancellation, termination or suspension of the Contractor in whole or in part; and/or
 - 3) Suspension or debarment of Contractor from eligibility to contract with the Owner or in the future or to receive bid packages.

9.3.1.4.1 The Contractor agrees to indemnify the Owner from the loss of any funds or other damages that may result from the Contractor's failure to achieve the W/M/DBE goals or expectancies set forth herein or to establish a good faith effort to do so, including attorneys' fees and costs associated with said failure by the Contractor or good faith investigation by the Owner. Failure of the Contractor to make a good faith effort to achieve W/M/DBE goals or expectancies may be a material breach of this Contract. The determination of whether the Contractor's efforts were made in "good faith" will be made by the Owner.

9.3.1.4.2 Unless otherwise provided in the Contract Documents, payment will be only for Work in place.

9.3.2 The Owner will have the right to omit or order nonperformance of a portion of the Work in the best interest of the Owner.

9.3.2.1 Should the Owner omit or order nonperformance of a portion of the Work, the Contract sum will be reduced accordingly. However, the Contractor will be paid for any such work actually completed and acceptable prior to the order to omit or nonperform.

9.3.2.2 Should the Owner omit or order nonperformance of a portion of the Work, acceptable materials ordered by the Contractor or delivered to the Work prior to the date of the Owner's order will be paid for at the actual cost to the Contractor and will become the property of the Owner.

9.3.2.3 In addition to the reimbursement hereinbefore provided, the Contractor shall be reimbursed for all actual costs incurred for the purpose of performing the omitted contract item prior to the date of the Owner's order. Such additional costs incurred by the Contractor must be directly related to the deleted contract item and will be supported by certified statements by the Contractor as to the nature the amount of such costs.

9.3.3 Payments may be made on account of nonperishable materials or equipment not incorporated in the Work but delivered and suitably stored at the Site which will be conditioned upon the following conditions being met:

- .1 The Materials have been stored or stockpiled in a manner acceptable to the Design Professional and Owner.
- .2 The Contractor has furnished the Design Professional with satisfactory evidence that the materials and transportation costs have been paid.
- .3 The Contractor has furnished the Design Professional with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
- .4 The Contractor has furnished the Owner legal title (free of liens or encumbrances of any kind) to materials so stored or stockpiled.
- .5 The Contractor has furnished to the Design Professional copies of paid invoices of stored materials.
- .6 Documentation that all material meets specification requirements.
- .7 The Contractor will be responsible for all loss or damage of any type to such materials or equipment and will make suitable replacement or repair as necessary at the Contractor's own expense.
- .8 The Contractor will be responsible for security with respect to all such stored materials and equipment.
- .9 The Contractor has furnished the Owner evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the Work.
- .10 Payments for material on hand for delivered material to be used in one item of Work must exceed \$3,000.00.
- .11 It is understood and agreed that the transfer of title and the Owner's payment for such stored or stockpiled materials will in no way relieve the Contractor of its responsibility for furnishing and placing such materials in accordance with the requirements of the Contract Documents.
- .12 No partial payment will be made for stored or stockpiled living or perishable plant materials.
- .13 The Contractor will bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this subsection.

14. In no case will the amount of payments for materials on hand exceed the Contract Price for such materials or the Contract Price for the Contract Item in which the material is intended to be used.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner upon receipt of payment by the Contractor. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner will, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances hereinafter referred to in this Article as liens in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials or equipment relating to the Work.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Design Professional will, within seven calendar days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Design Professional determines is properly due, or notify the Contractor and Owner in writing of the Design Professional's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Design Professional to the Owner, based on the Design Professional's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Design Professional's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Design Professional. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Design Professional has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.4.3 In taking action on the Contractor's Applications for Payment, the Design Professional will be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and will not be deemed to represent that the Design Professional has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 9.4.2 or other supporting data; that the Design Professional has made exhaustive or continuous on-site inspection or that the Design Professional has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner will be performed by the Owner acting in the sole interest of the Owner.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Design Professional may decide not to certify the Application for Payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Design Professional's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Design Professional is unable to certify payment in the amount of the Application, the Design Professional will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Design Professional cannot agree on a revised amount, the Design Professional will promptly issue a Application for Payment for the amount for which the Design Professional is able to make such representations to the Owner. The Design Professional may also decide not to certify payment, or because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Design Professional's opinion to protect the Owner from loss because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Contractor to make payment properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to complete the Work and to cover actual or liquidated damage for the anticipated delay
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.
- .8 Failure of the Contractor to provide satisfactory documentation of material and services purchases in accordance with the Construction Schedule.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

9.6.1 After the Design Professional has certified the Application for payment, the Owner will endeavor to make payment according to the Owner's standard payment procedures.

9.6.2 Prompt Payment Clause. When the Contractor receives payment from the Owner for labor, services, or materials furnished by sub-contractors and suppliers hired by the Contractor, the contractor will remit payment due those sub-contractors and suppliers in accordance with Florida Statute 255.0705 – 255.078. Failure of the Contractor to pay sub-contractors accordingly may be a material breach of the contract.

9.6.3 Neither the Owner nor the Design Professional will have an obligation to pay or to see to the payment of money to a Subcontractor, Sub-subcontractor or material supplier.

9.6.4 The payment of any Application for Payment prior to Final Acceptance of the Work by the Owner will in no way constitute an acknowledgement of the acceptance of the Work, or in any way prejudice or affect the obligation of the Contractor to repair, correct, renew, or replace, at the Contractor's expense, any defects or imperfections or design errors or omission in the design, construction, or in the strength or quality of the equipment or materials used in or about the construction of the Work under Contract and its appurtenances nor any damage due or attributed to such defects, which defect, imperfection, or damage will have been discovered on or before the Final Acceptance of the Work. The Contractor will be liable to the Owner for failure to correct same as provided herein.

9.6.5 A Application for Payment, a certified progress payment, or partial or entire use or occupancy of the Project by the Owner will not constitute acceptance of Work not in accordance with the Contract Documents.

9.6.6 The Owner may deduct from the balance due the Contractor under the provisions of the Contract Documents, any liquidated damages which may have accrued.

9.6.7 Provision for assessment of liquidated damages for delay will in no manner affect the Owner's right to terminate the Contract as provided in Article 13, TERMINATION OR SUSPENSION OF THE CONTRACT or elsewhere in the Contract Documents. The Owner's exercise of the right to terminate will not release the Contractor from its obligation to pay said liquidated damages in the amounts set out in the Contract.

9.7 SUBSTANTIAL COMPLETION

9.7.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

9.7.2 When the Contractor considers that the whole Work, or a portion thereof designated in the Contract Documents for separate completion, is substantially complete and the premises comply with Paragraph 3.15.1, the Contractor will submit to the Design Professional; (1) the permits and certificates referred to in Paragraph 12.5.4, and (2) the Contractor's request for inspection by the Design Professional and Owner.

9.7.2.1 The Design Professional and Owner will then make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item which is not in accordance with the requirements of the Contract Documents, the Design Professional will then prepare and submit to the Contractor a comprehensive list of items to be completed and/or corrected. The Contractor will proceed promptly to complete and correct items on the list before issuance of the Certificate of Substantial Completion by the Owner. The Contractor will then submit a request for another inspection to determine Substantial Completion. Repeat inspections will be performed prior to issuance of the Certificate of Substantial Completion by the Owner.

9.7.2.2 All Work items or Contract Requirements which remain incomplete/unsatisfied at the Date of Substantial Completion will form the initial "punch list" for Final Acceptance.

9.7.2.3 When the Work or designated portion thereof is substantially complete, the Owner will prepare a Certificate of Substantial Completion which will establish: the date of Substantial Completion; responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work; and insurance. All Warranties required by the Contract Documents will commence on the date of Substantial Completion. The Certificate of Substantial Completion will be submitted to the Design Professional and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.7.3 Upon Substantial Completion of the whole Work and upon application by the Contractor and certification by the Design Professional, the Owner will make payment, reflecting adjustment in retainage, if any, for such Work as provided in the Contract Documents.

9.7.4 After Substantial Completion of the whole Work, the Design Professional may, at the Design Professional's discretion and with the consent of the Contractor's Surety, approve an Application for Payment from which will be retained an amount not less than 1.5 times the contract value or 1.5 times the estimated cost, whichever is greater, of the Work remaining to be done. Remaining retainage will be released with Final Payment after Final Acceptance of the whole Work.

9.8 PARTIAL OCCUPANCY OR USE

9.8.1 The Owner or separate contractors may occupy or use any completed or partially completed portion of the Work at any stage. Such partial occupancy or use may commence whether or not the portion is substantially complete. When the Contractor considers a portion substantially complete, the Contractor will prepare and submit a list to the Design Professional as provided under Subparagraph 9.7.2.

9.8.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Design Professional will jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.8.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work will not constitute acceptance of the Work not complying with the requirements of the Contract Documents.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Upon receipt of written notice that inspection of the whole Work is ready for Final Acceptance, the Design Professional and Owner will promptly make such inspection and, when the Design Professional and Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will promptly issue a Certificate of Final Completion and Acceptance stating that to the best of the Owner's and Design Professional's knowledge, information and belief, and on the basis of the Owner's and Design Professional's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents. The Design Professional's Certification of the Final Application for Payment will constitute a further representation that conditions listed in Paragraph 9.9.2 as precedent to the Contractor's being entitled to Final application for Payment have been fulfilled. In the Final Certificate for Payment, the Design Professional will state the date on which the whole Work was fully complete and acceptable, which date will be the date of Final Acceptance.

9.9.2 Neither Final Payment nor any remaining retained percentage will become due until the Contractor submits to the Design Professional (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 calendar days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5) , if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If the Contractor fails to furnish such releases or waivers as the Owner reasonably requires to satisfy the Owner that there are no outstanding liens, the Owner may require the Contractor, at the Contractor's expense, to furnish a bond satisfactory to the Owner to indemnify the Owner against such liens. If such lien remains unsatisfied after payments are made, the Contractor will refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. Upon satisfactory Final Acceptance of all whole Work required by the Contract Documents, receipt of Notice of Final Acceptance from the Design Professional and compliance with Project Closeout of Section 01700 – PROJECT CLOSEOUT, the Contractor will make application for Final Payment in same format as Progress Payments.

9.9.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier will constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers will be in addition to the waiver described in Subparagraph 4.3.5.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

10.2 SAFETY OF PERSONS AND PROPERTY

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

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

10.2.2 The Contractor will give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor will erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Owner and users of adjacent sites and utilities.

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

10.2.5 The Contractor will promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in paragraphs 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable, except damage or loss solely attributable to acts or omissions of the Owner or Design Professional or anyone, directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

10.2.6 The Contractor will designate a responsible member of the Contractor's organization at the site whose duty will be the prevention of accidents. This person will be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Design Professional.

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

10.2.8 The Contractor will comply with the provisions of the Occupational Safety and Health Act of 1970, 84 Stat. 1190, 29 U.S.C. 611 et seq. (as amended), and applicable regulations and requirements under said Act. The Contractor will maintain an accurate record of all accidents causing death, traumatic injury, occupational disease, or damage to property, materials, supplies and equipment incidental to Work performed under this Contract.

10.2.9 The Contractor will be responsible for the preservation of all public and private property, and will protect carefully from disturbance or damage all land monuments and property markers until the Design Professional has witnessed or otherwise referenced their location and will not move them until directed.

10.2.10 The Contractor will be responsible for all damage or injury to property of any character, during the prosecution of the Work, resulting from any act, omission, neglect, or misconduct in the Contractor's manner or method of executing the Work, or at any time due to defective Work or materials, and said responsibility will not be released until the Project will have been completed and accepted.

10.2.11 When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the nonexecution thereof by the Contractor, Contractor will restore, at the Contractor's own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, or otherwise restoring as may be directed, or Contractor will make good such damage or injury in an acceptable manner.

10.2.12 Work that is to remain in place which is damaged or defaced by reason of Work performed under this Contract will be restored at no additional cost to the Owner.

10.2.13 Until the Design Professional's Final Written Acceptance of the whole Work, excepting only those portions of the Work accepted in accordance with Paragraph 9.7.2 herein, the Contractor will have the charge and care thereof and will take every precaution against injury or damage to any part due to the action of the elements or from any other cause, whether arising from the execution or from the nonexecution of the Work. The Contractor will rebuild, repair, restore, and make good all injuries or damages to any portion of the Work occasioned by any of the above causes before Final Completion and will bear the expense thereof.

10.2.14 If the Work is suspended for any cause whatsoever, the Contractor will be responsible for the Work and will take such precautions necessary to prevent damage to the Work. The Contractor will provide for normal drainage and will erect necessary temporary structures, signs, or other facilities. If the Owner orders the suspension of the Work, additional compensation or extension of time may be claimed by the Contractor. During such period of suspension of Work, the Contractor will properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedlings, and sod furnished under the Contract, and will take adequate precautions to protect new tree growth and other important vegetative growth against injury.

10.2.15 The Contractor will be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Contractor will be responsible to the Owner for the acts and omissions of all Contractor's employees and subcontractors, their agents and employees, and all other persons performing any of the Work under a contract with the Contractor.

10.3 EMERGENCIES

10.3.1 In an emergency affecting safety of persons or property, the Contractor will act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency will be determined as provided in Paragraph 4.3 and Article 7, CHANGES IN THE WORK.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

11.1 UNCOVERING OF WORK

11.1.1 If a portion of the Work is covered contrary to the Design Professional's/Owner's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Design Professional/Owner, be uncovered for the Design Professional's/Owner's observation and be replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If a portion of the Work has been covered which the Design Professional has not specifically requested to observe prior to its being covered, the Design Professional/Owner may request to see such Work and it will be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement will, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor will pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner will be responsible for payment of such costs.

11.2 CORRECTION OF WORK

11.2.1 The Contractor will promptly correct Work rejected by the Design Professional/Owner or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor will bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Design Professional's services and expenses made necessary thereby.

11.2.2 If, within one year after the Date of Substantial Completion and Acceptance of the Whole Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents; any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor will correct it promptly after receipt of a written notice from the Owner to do so. This obligation will survive termination of the Contract. The Owner will give such notice promptly after discovery of the condition.

11.2.3 The Contractor will remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

11.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Design Professional or Owner, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten calendar days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and will account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Design Professional or Owner's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum will be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor will pay the difference to the Owner.

11.2.5 The Contractor will bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

11.2.6 Nothing contained in Paragraph 11.2 will be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Subparagraph 11.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

11.2.7 Upon completion of the whole Work, the Design Professional and the Owner will expeditiously make final inspection in accordance with Section 01700 – PROJECT CLOSEOUT, and notify the Contractor of Final Acceptance. Such Final Acceptance, however, will not preclude or stop the Owner from correcting any measurement, estimate, or certificate made before or after completion of the Whole Work, nor will the Owner be precluded or stopped from recovering from the Contractor or Contractor’s Surety, or both, such overpayment as may be sustained, or by failure on the part of the Contractor to fulfill Contractor’s obligations under the Contract. A waiver on the part of the Owner of any breach of any part of the Contract will not be held to be a waiver of any other or subsequent breach.

11.2.8 The Contractor, without prejudice to the terms of the Contract, will be liable to the Owner for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards to the Owner’s rights under any warranty or guaranty.

11.3 ACCEPTANCE OF NONCONFORMING WORK

11.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment will be effected whether or not final payment has been made.

ARTICLE 12 MISCELLANEOUS PROVISIONS

12.1 GOVERNING LAW

12.1.1 The Contract will be governed by the law of the State of Florida. Venue of any actions will be in Hillsborough County.

12.2 SUCCESSORS AND ASSIGNS

12.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, contracts and obligations contained in the Contract Documents. Except as hereinafter provided, the Contractor will not assign or sublet this Contract as a whole without the written consent of the Owner, nor will the Contractor assign any monies due or to become due to Contractor hereunder, without the previous written consent of the Owner. If the Contractor attempts to make such assignment without such consent, the Contractor will nevertheless remain legally responsible for all obligations under the Contract.

13.2.2 The Owner reserves the right to transfer its interests herein to any other governmental body created, or authorized by law, to operate the Airport.

12.3 WRITTEN NOTICE

12.3.1 Written notice will be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

12.4 RIGHTS AND REMEDIES

12.4.1 Except as otherwise provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder will be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

12.4.2 No action or failure to act by the Owner, Design Professional or Contractor will constitute a waiver of a right or duty afforded them under the Contract, nor will such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

12.4.3 Continued performance by the Owner as to the terms of this Contract after default by the Contractor will not be deemed a waiver by the Owner of the right to cancel for any subsequent default. Inspections, measurements or certificates issued by the Owner, payments of money, acceptance of any Work, grants of any extension of time, or any other action taken by the Owner, will not operate as a waiver of any provisions of the Contract or any power therein reserved to the Owner of any rights to damages therein provided. Any waiver of any breach of Contract will not be held to be a waiver of any other or subsequent breach.

12.5 TESTS AND INSPECTIONS

12.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction will be made at an appropriate time. The Contractor will give the Owner and Design Professional timely notice of its readiness so the Design Professional may observe such inspections, tests or approvals conducted by the Contractor or public authorities other than the Owner. Refer to Section 01410 – Testing Laboratory Services.

12.5.2 If the Design Professional, Owner or other public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 12.5.1, the Design Professional will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspecting or approval and the Contractor will give timely notice to the Owner and Design Professional of when and where tests, inspections or approvals are to be made so the Design Professional may observe such procedures. The Owner will bear such costs except as provided in Subparagraph 12.5.3.

12.5.3 If such procedures for testing, inspection or approval under Subparagraphs 12.5.1 and 12.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor will bear all costs made necessary by such failure including those of repeated procedures and compensation for the Design Professional's services and expenses.

12.5.4 The Contractor will secure and promptly deliver to the Owner or Design Professional any required certificates of testing, inspection or approval, any occupancy permits, any certificates of final inspection of any part of the Contractor's Work and any operating permits for any mechanical apparatus, such as elevators, boilers, air compressors, etc., which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permits or certificates by the Owner or Design Professional will be a condition precedent to Substantial Completion of the Work or designated portion thereof.

12.5.5 Tests or inspections conducted pursuant to the Contract Documents will be made promptly to avoid unreasonable delay in the Work.

12.5.6 Notwithstanding any dispute which may arise out of the Work, the Contractor will carry on the work and maintain effective progress to complete same within the Contract Time(s) set forth in the Contract Documents.

ARTICLE 13
TERMINATION OR SUSPENSION OF THE CONTRACT

13.1 TERMINATION BY THE OWNER FOR CAUSE

13.1.1 If the Contractor is adjudged bankrupt, or if the Contractor make a general assignment for the benefit of the Contractor's creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if the Contractor fails to make prompt payment to Subcontractors in accordance with Florida Statute 255.0705 – 255.078 or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or disregards an instruction, order or decision of the Design Professional or otherwise is guilty of a substantial violation of any provision of the Contract, or any of the following occur, then the Contractor will be in default:

- .1 Fails to begin the Work under the Contract within the time(s) specified in the "Notice to Proceed", or
- .2 Performs the Work unsuitably or neglects or refuses to remove materials or to perform anew such Work as may be rejected as unacceptable and unsuitable, or
- .3 Discontinues the prosecution of the Work, or
- .4 Fails to resume Work which has been discontinued within a reasonable time after notice to do so, or
- .5 For any other cause whatsoever fails to carry on the Work in an acceptable manner.

13.1.1.1 Should the Design Professional/Owner consider the Contractor in default of the Contract for any reason hereinbefore, the Design Professional/Owner will immediately give notice to the Contractor and the Contractor's Surety as to the reasons for considering the Contractor in default and the Owner's intentions to terminate the Contract. If the Contractor or Surety, within a period of ten calendar days after such notice, does not proceed in accordance therewith, then the Owner, upon certification by the Design Professional that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and upon written notice to the Contractor and Contractor's Surety, take possession of all materials, tools, appliances, equipment and machinery and vehicles, offices and other facilities of the Project Site, and all materials intended for the Work, wherever stored, and within seven calendar days after such notice, the Owner may terminate the employment of the Contractor and finish the Work by whatever method the Owner may deem expedient. In such case, the Contractor will not be entitled to receive any further payment until the Work is completed.

13.1.1.2 The Owner will be entitled to collect from the Contractor all direct, indirect, and consequential damages suffered by the Owner on account of the Contractor's default, including, without limitation, additional services and expenses of the Design Professional made necessary thereby. The Owner will be entitled to hold all amounts due the Contractor at the date of termination until all of the Owner's damages have been established, and to apply such amount to such damages. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor and the Surety will be liable and will pay to the Owner the amount of such excess.

13.1.1.3 If it is determined that the Contractor was not in default pursuant to this Provision, then the termination will revert to a termination for convenience under Paragraph 13.2.1.

13.1.2 Termination of the Contractor's employment hereunder will not relieve the Contractor or Contractor's Surety of liability for past and future damages and losses incurred by the Owner on account of any act, omission, or breach by the Contractor. Liability for liquidated damages, if any, will continue to accrue as set forth in the Contract Documents.

13.1.3 The Owner will terminate the Contract or portion thereof by written notice when the Contractor is prevented from proceeding with the Construction Contract as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense.

13.1.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Design Professional's services and expenses made necessary thereby, such excess will be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor will pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, will be certified by the Design Professional, upon application for payment and this obligation for payment will survive termination of the Contract.

13.2 SUSPENSION BY THE OWNER FOR CONVENIENCE

13.2.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the work in whole or in part for such period of time as the Owner may determine. If the whole work is suspended, all calendar days elapsing between the effective dates of the Owner's orders to suspend and resume the work, due to causes not the fault of the Contractor, will be excluded from the Contract time.

13.3 TERMINATION FOR CONVENIENCE OF OWNER

13.3.1 The Owner, may terminate performance of the Work under this Contract in whole or, in part, if the Owner determines that a termination is in the Owner's interest. The Owner will terminate by delivery to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

13.3.2 After receipt of a Notice of Termination, and except as directed by the Owner, the Contractor will immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Clause:

- .1 Stop Work as specified in the Notice.
- .2 Place no further subcontracts or orders (referred to as subcontracts in this Clause) for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.
- .3 Terminate all subcontracts to the extent they related to the Work terminated.
- .4 Assign to the Owner, as directed, all rights, title, and interest of the Contractor under the subcontract terminated, in which case the Owner will have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- .5 With approval or ratification to the extent required by the Owner, settle all outstanding liabilities and termination settlement proposals arising from the terminations of subcontracts; the approval or ratification will be final for purposes of this Clause.
- .6 As directed by the Owner, transfer title and deliver to the Owner (1) the fabricated or unfabricated parts, Work in progress, completed Work, supplies, and other material produced or acquired for the Work terminated, and (2) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the Owner.
- .7 Complete performance of the Work not terminated. If it should become necessary to suspend Work for an indefinite period, the Contractor will store all materials in such a manner that they will not become an obstruction nor become damaged in any way. The Contractor will take every precaution to prevent damage or deterioration of the Work performed and provide for normal drainage of the Work. The Contractor will erect temporary structures where necessary to provide for traffic on, to, or from the Airport.

- .8 Take any action that may be necessary, or that the Owner may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Owner has or may acquire an interest.
- .9 Use its best effort to sell, as directed or authorized by the Owner, any property of the types referred to in Subparagraph 13.3.2.6 above; provided, however, that the Contractor (1) is not required to extend credit to any purchaser and (2) may acquire the property under the conditions prescribed by, and at process approved by, the Owner. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Owner under this Contract, credited to the price or cost of the Work, or paid in any manner directed by the Owner.

13.3.3 The Contractor may submit to the Owner a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Owner. Within 30 calendar days, the Owner will accept title of those items and remove them or enter into a storage contract. The Owner may verify the list upon removal of the items or, if stored, within 45 calendar days from submission of the list, and will correct the list, as necessary, before final settlement.

13.3.4 After termination, the Contractor will submit a final termination settlement proposal to the Owner in the form and with the certification prescribed by the Owner. The Contractor will submit the proposal promptly, but no later than 60 calendar days from the effective date of termination, unless extended in writing by the Owner upon written request of the Contractor. If the Contractor fails to submit the proposal within the time allowed, the Owner may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and will pay the amount determined. No further compensation will be considered if the Contractor fails to meet the submittal requirements.

13.3.4.1 Subject to Paragraph 13.3.4 above, the Contractor and the Owner may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit of Work done. However, the agreed amount may not exceed the total Contract sum as reduced by (1) the amount of payments previously made and (2) the Contract Sum of Work not terminated. The Contract will be amended and the Contractor paid the agreed amount. Paragraph 13.3.6 below will not limit, restrict, or affect the amount that may be agreed upon to be paid under this Paragraph.

13.3.5 If the Contractor and the Owner fail to agree on the whole amount to be paid the Contractor because of termination of the Work, the Owner will pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under Paragraph 13.3.4.1 above:

- .1 For Contract Work performed before the effective date of termination, the total (without duplication of any items) of –
 - (a) The cost of this Work;
 - (b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the termination portion of the Contract if not included in Subdivision (a) above; and
 - (c) A sum, as profit on (a) above, which will not exceed 5%. If it appears, however, that the Contractor would have sustained a loss on the entire Contract had it been completed, the Owner will allow no profit under this Subdivision (c) and will reduce the settlement to reflect the indicated rate of loss.
 - (d) When the Contract, or any portion thereof, is terminated before completion of all items of Work in the Contract, payment will be made for the actual number of units of Work completed at the Bid Unit Price or as mutually agreed for items of Work partially completed. No claims or loss of anticipated profits will be considered for items of Work completed at the Bid Unit Prices.

- .2 The reasonable costs of settlement of the Work terminated, including –
 - (a) Reasonable accounting, legal, clerical, and other expenses necessary only for the preparation of termination settlement proposals and support data;
 - (b) The termination and settlement of subcontracts (excluding the amounts of such settlements);
 - (c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory; and
 - (d) Reimbursement for organization of the Work, and other overhead expenses (when not otherwise included in the Contract), and moving equipment and materials to and from the site will be considered, the intent being that an equitable settlement will be made with the Contractor.

13.3.6 Except for normal spoilage, and except to the extent that the Owner expressly assumed the risk of loss, the Owner will exclude from the amounts payable to the Contractor under Paragraph 13.3.5 above, the fair value, as determined by the Owner, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Owner or to the buyer.

13.3.7 In arriving at the amount due the Contractor under this Clause, there will be deducted –

- .1 All unliquidated advance or other payments to the Contractor under the terminated portion of the Contract;
- .2 Any claim which the Owner has against the Contractor under this Contract; and
- .3 The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under the provisions of this Clause and not recovered by or credited to the Owner.

13.3.8 Unless otherwise provided in this Contract or by statute, the Contractor will maintain all records and documents relating to the termination portion of this Contract for three years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor will make these records and documents available to the Owner, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Owner, photographs, microphotographs, electronic media or other authentic reproductions may be maintained instead of original records and documents.