

**CONTRACT BETWEEN
TOWN OF MONTVERDE, FLORIDA AND
[INSERT CONTRACTOR NAME].**

THIS CONTRACT is dated as of the _____ day of _____ in the year 20__ by and between the **TOWN OF MONTVERDE**, Florida, a municipal corporation, 17404 Sixth Street, Montverde, FL 34756, hereinafter called the **TOWN**, and **[INSERT CONTRACTOR NAME]**, [INSERT ADDRESS], Florida [INSERT ZIP CODE] hereinafter called the **CONTRACTOR**.

ADDRESSES AND AUTHORIZED REPRESENTATIVES

The authorized representatives and addresses of the TOWN and CONTRACTOR and PROFESSIONAL are:

TOWN::

Representative: Paul Larino
Mailing Address: P.O. Box 560008.
Physical Address: 17404 Sixth St.
State, Zip: Montverde, FL 34756
Office: 407-469-2681
Fax: 407-469-2773
E-mail: townmanager@mymontverde.com

CONTRACTOR:

Representative:
Mailing Address:.
Physical Address:
TOWN, State, Zip:
Office:
Fax:
E-mail:
License #:

PROFESSIONAL (Architect) (Designated Professional):

Representative: Michael Latham
Mailing Address: 1000 E Highway 50 | Ste. 201A
Physical Address: 1000 E Highway 50 | Ste. 201A
TOWN, State, Zip: Clermont, Florida 34711
Office: 407-608-5677
Fax: 888-599-4814
E-mail: mblatham@gatorsketch.com
License #: AA26002310

RECITALS

WHEREAS, TOWN intends to construct the Work and is engaging the CONTRACTOR to perform certain labor, supervision and services and provide certain equipment, goods and materials for the Work.

WHEREAS, the TOWN and CONTRACTOR each acknowledge that it will act in good faith in carrying out its duties and obligations.

WHEREAS, CONTRACTOR was chosen as CONTRACTOR pursuant to sealed bid under Section 287.057, Florida Statutes, following the guidelines set forth under such statute.

WHEREAS, CONTRACTOR was found to be most responsive, responsible, low bidder to provide construction services for the Work, **Bid No. 2024-06**.

WHEREAS, the CONTRACTOR desires to perform such construction services subject to the terms of this Contract.

WHEREAS, the TOWN'S engagement of the CONTRACTOR is based on CONTRACTOR'S representations to the TOWN that it (i) is experienced in the type of labor and services the TOWN is engaging CONTRACTOR to perform, (ii) is authorized and licensed to perform the type of labor and services for which it is being engaged in the State and locality in which the Project is located; (iii) is qualified, willing and able to perform construction services for the Work; and (iv) has the expertise and ability to provide the type of labor and services for which it is being engaged, and which will comply with the requirements of all governmental, public authorities and agencies having or asserting jurisdiction over the Work.

WHEREAS, TOWN and CONTRACTOR each acknowledges that it has reviewed and familiarized itself with this Contract, including the documents enumerated in Article 21 and agrees to be bound by the terms and conditions contained therein.

WHEREAS, TOWN has engaged one or more Professionals to perform architectural and/or engineering services for the Work, including preparation of Site-specific Construction Documents.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, promises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

ARTICLE 1 WORK

- 1.1 CONTRACTOR shall furnish or cause to be furnished, and pay for out of the Construction Price, all management, supervision, financing, goods, products, materials, equipment, systems, labor, services, permits, licenses, construction machinery, water, heat, utilities, transportation and other facilities necessary for proper execution and completion of the Work (or Scope of Services) in accordance with all the terms and conditions of the Contract Documents. The Work is generally described as follows:

SEE EXHIBIT A

As part of construction of the new library as per plans and specifications

ARTICLE 2 MANNER OF PERFORMING WORK AND REQUIRED SERVICES

- 2.1 On the terms and conditions set forth in this Contract, TOWN hereby engages CONTRACTOR to perform and complete all Work in a professional and workmanship like manner, and shall conform to the industry standards in Central Florida for construction of a public safety complex. All materials being utilized in the construction and all workmanship shall be completed in accordance with the plans and specifications. CONTRACTOR shall perform and complete its obligations under this Contract using its best skill and attention, and covenants with TOWN to furnish management, supervision, coordination, labor and services which (i) expeditiously, economically and properly completes the Work in the manner most consistent with the Construction Documents and this Contract, (ii) complies with the Construction Documents and this Contract; and (iii) in accordance with the industry standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.
- 2.2 **General project services:**
- 2.2.1 CONTRACTOR agrees to provide all services required to complete its WORK in an expeditious and economical manner consistent with this Contract.
- 2.2.2 CONTRACTORS shall, in consultation with TOWN, PROFESSIONAL and any of CONTRACTORS subcontractors, endeavor to develop, implement and maintain a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and upon completion, the Project is deemed a success by all parties.
- 2.2.3 TOWN'S designated PROFESSIONAL architect will represent the TOWN in dealing with the CONTRACTOR on all design and technical matters, and will administer this Contract. TOWN and CONTRACTOR shall communicate with each other in the first instance

through the PROFESSIONAL architect and/or the TOWN's Project Manager. The terms TOWN and TOWN'S Project Manager shall be synonymous for the purpose of this document. The TOWN'S Project Manager shall have full access to the construction site. The TOWN'S Project manager shall adhere to CONTRACTOR'S safety requirements and shall not directly interfere, direct, or participate in the construction work. The TOWN'S instructions to the CONTRACTOR will be issued through the PROFESSIONAL architect RFI or ASI. The TOWN'S Project Manager and the PROFESSIONAL will endeavor to ensure that one or the other is available for consultation at all times throughout this contract period.

2.2.4 CONTRACTOR understands and acknowledges the TOWN'S intent that the Project will be complete by the Date of Substantial Completion. CONTRACTOR shall timely prepare and submit the CPM Schedule from the date of Notice to Proceed through the Final Completion date for the TOWN'S review and approval. This schedule is to be updated monthly. Failure to submit or update the schedule to reflect current field conditions shall result in non-payment or delay of payment until the CPM is received.

23 **Construction Services:**

2.3.1 CONTRACTOR shall supervise and direct its scope of the Work. At a minimum, CONTRACTOR shall:

- i. Provide an on-site job superintendent who shall speak, read and write English, and who shall supervise all of CONTRACTOR'S trades and direct all its construction activities, establish and maintain construction schedules for its Work and submit to TOWN daily progress reports. The superintendent shall not be a hands-on tradesman. TOWN shall retain the authority to remove the superintendent with cause with ten calendar day's written notice. The superintendent shall stay on the job through 100% of construction of its Work and final punch-list items related to CONTRACTOR'S Work. Any person employed by the CONTRACTOR or its subcontractor who is found to be conducting themselves in a detrimental manner shall be removed from the job site immediately upon notification to the superintendent.
- ii. Coordinate its subcontractors and suppliers, and supervise all construction services furnished by CONTRACTOR.
- iii. Be familiar with all trade divisions and subcontractors' scopes of Work, all applicable building codes, the Construction Documents, and this Contract.
- iv. Check and approve shop drawings and materials delivered to the site relating to its Work, regularly inspect its Work and confer with TOWN to determine its compliance with the Construction Documents and this Contract.
- v. Prepare and maintain Project records, process documents, and staff the site field office.

2.3.2 CONTRACTOR shall insure that the Work is in compliance with the Construction Documents and complies with any applicable law, statute, building code, rule or regulation of any public authority or agency having jurisdiction over the Project.

- 2.3.3 CONTRACTOR shall comply with and cause its subcontractors and suppliers to comply with the Project Construction Schedule and applicable sub-schedules. CONTRACTOR shall review schedules from other subcontractors and suppliers, and coordinate as necessary with other subcontractors, and enforce compliance with all applicable schedules to insure timely completion of its Work. If at any time its Work is delayed, CONTRACTOR shall notify TOWN as to the probable causes for the delay and possible alternatives, and make recommendations to minimize expense to TOWN.
- 2.3.4 The PROFESSIONAL architect will visit the Project Site at intervals appropriate to the state of construction and with sufficient frequency to familiarize itself with the progress and quality of the Work and to inspect the Work. The PROFESSIONAL architect's interpretation and decisions shall be final regarding the Construction Documents and the Work.
- 2.3.5 All material, workmanship, and equipment must be subject to the inspection and approval of the TOWN's Project Manager and PROFESSIONAL architect.

24 INTENTIONALLY DELETED.

25 CONTRACTOR shall, prior to the execution of this Contract, prepare and attach as **Appendix A** the Contractor's Personnel Chart which lists by name, job category and responsibility the CONTRACTOR'S primary employees who will work on the Project. CONTRACTOR shall promptly inform TOWN in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). TOWN shall have the right to reject any proposed replacement for reasonable cause.

26 CONTRACTOR (i) shall within ten (10) days of the Notice to Proceed relating to CONTRACTOR'S Work, prepare and provide TOWN the Contractor's Subcontractors and Suppliers Chart which lists by name and general Project responsibility each subcontractor and supplier who will be utilized by CONTRACTOR to provide goods or services with respect to the Project; (ii) shall not enter into any agreement with any subcontractor or supplier to which TOWN raises a reasonable, timely objection with full compensation to be paid CONTRACTOR, with mark-up, for any premium costs in changing Subcontractors or Suppliers at TOWN'S direction; and (iii) shall promptly inform TOWN in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). TOWN shall have the right to reject any proposed replacement with full compensation to be paid the CONTRACTOR, with mark-up, for any premium costs in changing subcontractors or suppliers at TOWN'S direction.

27 CONTRACTOR shall utilize the U.S. Department of Homeland Security's E-Verify system in accordance with the terms governing use of the system to confirm the employment eligibility of:

- A. All persons employed by CONTRACTOR during the term of this Contract to perform employment duties within Monverde; and

- B. All persons, including subcontractors, assigned by the CONTRACTOR to perform work pursuant to the contract.

28 INTENTIONALLY DELETED.

29 CONTRACTOR acknowledges its continuing duty to review and evaluate the Construction Documents, from the perspective of a licensed contractor and not a design professional, during the performance of its services and shall immediately notify the TOWN and PROFESSIONAL architect about any problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents, and variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations. Notwithstanding the foregoing or anything contained in this Contract to the contrary, CONTRACTOR shall not be responsible for any problems, conflicts, defects, deficiencies, inconsistencies or omissions contained in or between the Construction Documents, or for any drawings, plans, or specifications prepared by the TOWN or any PROFESSIONAL but only if CONTRACTOR has notified the TOWN and PROFESSIONAL as required herein and PROFESSIONAL has not issued clarification to CONTRACTOR, or for the work of any design professional, separate contractor, supplier, or consultant engaged directly by the TOWN.

210 Schedule Requirements.

2.10.1 The Construction Schedule shall include all pertinent dates and periods for timely completion of the Work.

210.1.1 Unless otherwise directed and approved by TOWN, the CONTRACTOR shall prepare the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.

210.1.2 The Construction Schedule shall include (i) the date of the Notice to Proceed, (ii) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (iii) any guideline and milestone dates required by TOWN; (iv) any applicable subcontractor and supplier subschedules; (v) a submittal schedule which allows sufficient time for review of documents and submittals; (vi) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and (vii) required decision dates.

210.1.3 By reviewing the Construction Schedule, TOWN and PROFESSIONAL do not assume any of CONTRACTOR'S responsibility.

210.1.4 CONTRACTOR shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. If the actual status is behind when compared against the Construction Schedule, then the CONTRACTOR shall immediately discuss the status of the Work with

the PROFESSIONAL so that proper overall management may be provided.

2.10.15 CONTRACTOR shall periodically and in all instances when CONTRACTOR anticipates performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare an updated Construction Schedule. The updated Construction Schedule shall be accompanied by a narrative report explaining in detail any modifications of the critical path schedule, reasons for modifications, report corrective action taken or proposed and any other pertinent information to explain how to avoid delay in delivering the work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by TOWN.

2.10.2 Delay in Performance.

2.10.21 CONTRACTOR expressly agrees to complete the Work within the time specified, subject to extensions of time as provided herein.

2.10.22 CONTRACTOR shall determine and promptly notify CONTRACTOR and PROFESSIONAL in writing when it believes adjustments to the required dates of Substantial Completion or Final Completion, or other milestone dates required by TOWN, if

any, are necessary, but no such adjustments shall be effective unless approved in writing by TOWN and PROFESSIONAL, such approval not to be unreasonably withheld. TOWN may, but is not required to, accept the CONTRACTOR'S adjustments.

2.11 **Subcontractor / Supplier Contracts.** CONTRACTOR shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with this Contract. It is the intent of TOWN and CONTRACTOR that the obligations of Contractor's subcontractors and suppliers inure to the benefit of TOWN and CONTRACTOR, and that TOWN be a third-party beneficiary of CONTRACTOR'S agreements with its subcontractors and suppliers.

2.11.1 CONTRACTOR shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of this Contract, with financial information redacted, to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of this Contract available to its respective subcontractors and suppliers.

2.11.2 CONTRACTOR shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract that are included by reference in its written contract with CONTRACTOR, and that it will abide by those terms, conditions and requirements.

2.11.3 CONTRACTOR'S written contracts with its subcontractors and suppliers shall be

consistent with the terms of this Contract and shall include the acknowledgment and agreement of each subcontractor or supplier that TOWN is a third-party beneficiary of the contract. CONTRACTOR'S agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Contract, and upon request of TOWN, CONTRACTOR'S subcontractors and suppliers will perform services for TOWN.

ARTICLE 3 CONTRACT TIME/DAMAGES FOR DELAY

- 3.1 Time for Performance.
 - 3.1.1 Commencement of Construction. CONTRACTOR shall commence construction of its scope of the Work within ten (10) calendar days of receipt of the Notice to Proceed, hereinafter the "Commencement Date".
 - 3.1.2 Substantial Completion. CONTRACTOR shall accomplish Substantial Completion of its scope of the Work on or before 365 calendar days (the "required date of Substantial Completion") from the issuance of the Notice to Proceed.
 - 3.1.3 Final Completion. CONTRACTOR shall accomplish Final Completion of its scope of the Work on or before 30 calendar days from the date of Substantial Completion, hereinafter the "required date of Final Completion".
- 3.2 Construction Schedule. CONTRACTOR shall no later than ten (10) calendar days after issuance of the Notice to Proceed prepare and submit a preliminary Construction Schedule to TOWN and PROFESSIONAL architect for their review and acceptance.
- 3.3 CONTRACTOR recognizes that time is of the essence of this Contract and that TOWN will suffer financial loss if the Work is not completed within the times specified above, plus any extensions thereof approved in a change order or an addendum to this Contract and signed by TOWN. CONTRACTOR acknowledges that proving the actual loss and damages suffered by TOWN if the Work is not completed on time is impracticable and not susceptible to exact calculation. Accordingly, instead of requiring any such proof, CONTRACTOR agrees that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay TOWN \$2,125 (\$1,750 + 0.01% of contract amount exceeding \$6,000,000) for each calendar day that expires beyond the time specified in paragraph 3.1 above for Substantial Completion, until CONTRACTOR achieves Substantial Completion. \$5,000 of the Contract Price shall be consideration for inclusion of this Liquidated Damages provision. The foregoing liquidated damages are TOWN'S sole remedy for delays caused by CONTRACTOR.
- 3.4 Intentionally deleted.

ARTICLE 4 CONTRACT PRICE

- 4.1 TOWN shall pay and CONTRACTOR shall accept, as full and complete payment for the

CONTRACTOR'S timely and complete performance of the Work in accordance with the Contract Documents the fixed price of _____ DOLLARS AND 00/100 (\$ _____ .00) ("Contract Price").

- 4.2 The CONTRACTOR agrees that the Contract Price is a fixed price and agrees to perform all of the WORK as described in the CONTRACT DOCUMENTS, subject to additions and deductions by Change Order. The TOWN shall pay the CONTRACTOR only for the Contract Price.
- 4.3 Prior to execution of this Contract, CONTRACTOR shall prepare and present to TOWN and PROFESSIONAL architect the Contractor's Compensation Schedule which includes, the Schedule of Values for payment of the Contract Price on a lump sum basis for each of the major [CSI] divisions of construction. The Schedule of Values must reflect total Contract Price. The Compensation Schedule, once approved, shall be attached hereto and incorporated herein as **Appendix B**.

ARTICLE 5 PAYMENT PROCEDURES

- 5.1 On the 1st business day of each month, CONTRACTOR shall submit applications for payment to PROFESSIONAL architect at mblatham@gatorsketch.com who will process for payment for Work completed and in duplicate to TOWN's Project Manager, _____ . Each application shall contain the designation "**Town of Montverde Library Project**" and shall signify the percentage complete. Attachments to the applications for payment shall identify critical, descriptive data, which reflects all construction activities completed to date for review of the PROFESSIONAL architect and TOWN. The CONTRACTOR shall be required to submit an updated Critical Path Method (CPM) schedule with the monthly applications for payment. The CPM is a requirement for payment. Failure to submit or update the schedule to reflect current field conditions shall result in non-payment or delay of payment until the CPM is received.
- 5.2 The TOWN shall make payment on all invoices in accordance with the Florida Prompt Payment Act, sections 218.70 through 218.79, Florida Statutes. All requests for payment of retainage shall be in accordance with the Florida Prompt Payment Act.
- 5.3 Progress payments will be made in an amount equal to 90% of the Work completed (with the balance being retainage), but, in each case, less the aggregate of payments previously made and less such amounts as PROFESSIONAL architect may determine or TOWN may withhold, including but not limited to liquidated damages , all pursuant to the terms of this Contract. The date on which payment is due shall be referred to as the "Payment Date". Prior to final payment the CONTRACTOR shall provide all contract close out documents including but not limited to as-builts, operating and maintenance manuals, and warranties. Additionally, the CONTRACTOR must complete all punch-list items prior to final payment.
- 5.3.1 CONTRACTOR shall prepare a list of items to be rendered complete, satisfactory, and acceptable within thirty (30) calendar days after reaching

Substantial Completion. Failure of the CONTRACTOR to include any corrective work or pending items not yet completed on the list developed pursuant to this section does not alter the responsibility of the CONTRACTOR to complete all construction services set forth herein. Upon completion of all items on the list, the CONTRACTOR may submit a payment request with its next monthly invoice for all remaining retainage withheld by TOWN. If a good-faith dispute exists as to whether one or more items have been completed pursuant to this Contract for Construction, TOWN may continue to withhold an amount not to exceed one hundred fifty percent (150%) of the total costs to complete the remaining items. The CONTRACTOR'S project representative shall be required to review these estimates with TOWN and sign the estimate in agreement.

- 54 Other than as set forth in this Contract and payment of the Contract Price, the CONTRACTOR shall not be entitled to additional payment for any expenses, fees, or other costs it may incur at any time and in connection with its performance hereunder. The CONTRACTOR hereby agrees that the Contract Price is fully loaded and includes all overhead common expenses, travel expenses, administrative and technical support expenses and computer expenses, and administrative expenses, including but not limited to:
- 54.1 costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by CONTRACTOR at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by CONTRACTOR. Cost for items used by CONTRACTOR shall mean fair market value;
 - 54.2 costs incurred to provide CONTRACTOR safety costs;
 - 54.3 costs of removal of CONTRACTOR'S debris from the site;
 - 54.4 costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service and reasonable petty cash expenses of the site office;
 - 54.5 that portion of the reasonable expenses of CONTRACTOR'S personnel incurred while travelling in discharge of duties directly connected with the Work;
 - 54.6 sales, use or similar taxes imposed by a governmental authority and paid by the CONTRACTOR and directly related to the Work.
 - 54.7 data processing costs directly related to the Work; however, these costs shall not include any hardware, software, or CADD costs;
 - 54.8 expenses incurred in accordance with CONTRACTOR'S standard personnel policy

for relocation and temporary living allowances of personnel required for the Work;

- 54.9 rental charges for machinery, equipment, and tools not customarily owned by construction workers;
- 54.10 wages, salaries, bonuses and incentive compensation of CONTRACTOR'S supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on or off the Project Site, including all company overhead and expenses; and
- 54.11 cost of fringe benefits, constructions, assessments and taxes, including for example such items as Unemployment Compensation and Social Security, to the extent that such cost is required by law and is based on the compensation paid to CONTRACTOR'S employees.
- 54.12 Should CONTRACTOR be in default of this Contract, PROFESSIONAL may withhold all or part of an application for payment to the extent reasonably necessary to protect TOWN. If PROFESSIONAL is unable to certify payment in the amount of the application, PROFESSIONAL shall notify CONTRACTOR and TOWN as provided for herein. If CONTRACTOR and PROFESSIONAL cannot agree on a revised amount, PROFESSIONAL shall promptly authorize payment for the amount which PROFESSIONAL is able to make such representations to TOWN. PROFESSIONAL may also withhold payment or, because of subsequently discovered evidence, may nullify the whole or part of an application for payment previously issued, to such extent as may be necessary in PROFESSIONAL'S opinion to protect TOWN from loss for which CONTRACTOR is responsible, including loss resulting from its acts and omissions, because of
 - (i) defective Work not remedied;
 - (ii) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to TOWN is provided by CONTRACTOR;
 - (iii) failure of CONTRACTOR to make payments properly to subcontractors for labor, materials or equipment;
 - (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
 - (v) damage to TOWN or other contractor;
 - (vi) reasonable evidence that the Work will not be completed within dates established in the Construction Schedule due to the fault of CONTRACTOR, and that the unpaid balance would not be adequate to cover liquidated damages for the anticipated delay; or
 - (vii) persistent failure to carry out the Work in accordance with this Contract.

55 **Right to Refuse Payment.** PROFESSIONAL'S approval of CONTRACTOR'S invoice shall not preclude TOWN from exercising any of its remedies under this Contract. In the event of a dispute, payment shall be made in accordance with Part VII, Chapter 218, Florida Statutes, for amounts not in dispute, subject to any setoffs claimed by TOWN. TOWN, to the extent permitted by Part VII, Chapter 281, Florida Statutes, shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to CONTRACTOR due to:

- (i) CONTRACTOR'S failure to perform the Work in compliance with the requirements of this Contract or any other agreement between the parties;
- (ii) CONTRACTOR'S failure to correctly and accurately represent the Work performed in a payment request, or otherwise;
- (iii) CONTRACTOR'S performance of the Work at a rate or in a manner that, in TOWN'S opinion, is likely to result in Substantial Completion or Final Completion being inexcusably delayed;
- (iv) Contractor's failure to use funds previously paid CONTRACTOR by TOWN, to pay CONTRACTOR'S Project-related obligations including, but not limited to, CONTRACTOR'S subcontractors, materialmen, and suppliers;
- (v) claims made, or likely to be made, against TOWN or its property;
- (vi) loss caused by CONTRACTOR or CONTRACTOR'S subcontractors, or suppliers, or
- (vii) CONTRACTOR'S failure or refusal to perform any of its obligations to TOWN.

56 **Compensation of Contractor's Subcontractors and Suppliers.** Upon receipt of payment from TOWN, CONTRACTOR shall pay each of its subcontractors and suppliers out of the amount received by CONTRACTOR on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to CONTRACTOR on account of such entity's portion of the Work. Except as otherwise may be provided by law, TOWN shall have no obligation to pay, and shall not be responsible for payments to, CONTRACTOR's subcontractors and suppliers.

57 **Final Payment.** Prior to being entitled to receive final payment, and as a condition precedent thereto, CONTRACTOR must achieve Final Completion. TOWN shall, subject to its rights set forth in this Contract, make final payment of all sums due CONTRACTOR in accordance with Part VII, Chapter 218, Florida Statutes.

ARTICLE 6 TOWN RESPONSIBILITIES

61 TOWN, through its PROFESSIONAL, shall promptly review the deliverables and other

materials submitted by CONTRACTOR and provide direction to CONTRACTOR as needed.

- 62 TOWN shall pay CONTRACTOR, in accordance with the provisions of this Contract, for required services timely submitted and approved and accepted by TOWN in accordance with the terms of this Contract and the Contract Documents.
- 63 TOWN will provide an on-site office for use of CONTRACTOR.
- 64 TOWN will provide temporary utilities to the site.

ARTICLE 7 CONTRACTOR'S REPRESENTATIONS

CONTRACTOR makes the following representations upon which TOWN has relied:

- 7.1 CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in Exhibit D.
- 7.2 CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site surface conditions that may affect costs, progress, and performance of the Work.
- 7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- 7.4 CONTRACTOR has carefully studied the engineer's drawings from the perspective of a licensed contractor and not a design professional, and is aware of the nature of the Work to be performed.
- 7.5 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- 7.6 CONTRACTOR has given PROFESSIONAL architect written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the CONTRACTOR Documents, pursuant to CONTRACTOR'S review from the perspective of a licensed contractor and not a design professional, and the written resolution thereof by PROFESSIONAL architect is acceptable to CONTRACTOR
- 7.7 The Contract Documents appear to be generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work. CONTRACTOR acknowledges and represents it has not relied, and does not and will not rely, upon any representations or warranties by TOWN concerning Contract Documents, as no such representations or warranties have been or are hereby made.
- 7.8 CONTRACTOR understands and agrees that the requirements established by the

Construction Documents shall be considered as the minimum which will be accepted.

ARTICLE 8 CHANGE ORDERS AND CHANGES TO THE WORK

- 8.1 **Change Order Requests.** Any party to the construction process may request changes to the Work, compensation or applicable schedules after execution of this Contract, and without invalidating this Contract. Unless otherwise specified herein, the PROFESSIONAL architect shall prepare the change orders and construction change directives. All Change Order requests shall be in writing and approved prior to the work which is the subject of the Change Order being completed, unless otherwise stated herein.
- 8.1.1 With respect to such requests for changes by the CONTRACTOR, CONTRACTOR shall prepare and submit written change order requests to the designated PROFESSIONAL architect and TOWN.
- 8.1.2 INTENTIONALLY DELETED.
- 8.1.3 When requested to do so, CONTRACTOR shall prepare and submit to a PROFESSIONAL drawings, specifications or other data in support of a change order request.
- 8.1.4 Each change order shall include time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project.
- 8.2 **TOWN-Directed Changes.** TOWN may unilaterally direct CONTRACTOR to implement changes in the Work so long as the Work TOWN is requiring is not outside of the general scope of this Contract, and CONTRACTOR, upon written direction from TOWN, shall proceed with such change.
- 8.3 **Professional-Directed Changes.** A Professional, without the TOWN'S prior approval, may authorize or direct CONTRACTOR to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and CONTRACTOR shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the CONTRACTOR.
- 8.4 **Administration of Changes.** The PROFESSIONAL architect and TOWN will administer and manage all change order requests and change orders and will prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and change orders.
- 8.5 **Compensation for Changes.** With respect to all change order requests involving credit to the TOWN or additional compensation to CONTRACTOR, CONTRACTOR shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare and itemized accounting

together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the designated PROFESSIONAL.

85.1 If price quotations for change order requests are determined by the PROFESSIONAL architect to be unreasonable, CONTRACTOR shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the PROFESSIONAL determines the quotation is unreasonable, the TOWN may require that the subject Work be performed on a time and material basis.

85.2 CONTRACTOR and its subcontractors and suppliers shall not be allowed any additional compensation for any costs, fees or expenses incurred in performing services already required by this Contract, and shall not be entitled to additional reimbursement for home-office, other non-job site or indirect overhead expenses, or tools necessary for construction.

85.3 It is the responsibility of CONTRACTOR to review and approve all pricing of additional work required of its subcontractors and suppliers.

85.4 Additional work which is not part of the Contract Documents and which does not impact the schedule shall require an executed change order and is not entitled to an extension of time but CONTRACTOR shall be reimbursed the actual incurred costs and expenses paid to subcontractors and suppliers plus a maximum markup to TOWN of ____ percent (____%) to cover overhead and profit.

8.5.4.1 CONTRACTOR'S subcontractor and sub- subcontractor change order markup is not to exceed _____ percent (____%).

85.5 Additional work which is not part of the Contract Documents and which does impact the schedule shall require a change order and CONTRACTOR is entitled to an extension of time and the actual incurred costs and expenses paid to subcontractors and suppliers plus a maximum markup to TOWN of ____ percent (____%) to cover overhead and profit.

8.5.5.1 CONTRACTOR'S subcontractor and sub- subcontractor change order markup is not to exceed ____ percent (____%).

8.6 **Performance of Changes.** Upon receipt of a field order or change order, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.

8.7 **Disputes Regarding Changes.**

8.7.1 Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change

shall be carried out if the TOWN issues a Construction Change Directive. No claim shall be prejudiced by performance of the Work so long as the TOWN is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the TOWN recites the reasons for its dispute in the written notice. Failure to notify the TOWN in writing shall constitute a waiver of any claim resulting from the change.

- 8.7.2 In the event a change order request is approved by the TOWN in the absence of an agreement as to cost, time, or both, the appropriate PROFESSIONAL will (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the TOWN'S behalf; (iii) take such other action as may be reasonably necessary or as the TOWN may request; and (iv) make a written recommendation to the TOWN concerning any appropriate adjustment in the Construction Price or time.
- 8.7.3 A Construction Change Directive is a written order prepared by the PROFESSIONAL and signed by the TOWN and the PROFESSIONAL, directing a change in the Work prior to the agreement on any change in the contract price, time or both. The issuance of a Construction Change Directive shall be used in the absence of agreement on the terms of a Change Order. If the Directive provides for a change in the contract price, the adjustment shall be based on one of the following:
- (i) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - (ii) unit prices stated in the Contract Documents or subsequently agreed upon;
 - (iii) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 - (iv) as set forth below.
- 8.7.4 CONTRACTOR shall promptly proceed with the Work upon receipt of a Construction Change Directive, and shall immediately advise the PROFESSIONAL of any disagreement with the method of compensation set forth in the Directive.
- 8.7.5 CONTRACTOR shall sign the Construction Change Directive if CONTRACTOR agrees with the adjustment in the time or contract price. Upon signature, the Construction Change Directive shall be effective as a Change Order.
- 8.7.6 If CONTRACTOR does not respond promptly or disagrees with the method of adjustment, the method of adjustment shall be determined by the PROFESSIONAL on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, and shall include a reasonable allowance for overhead and profit. In such case, CONTRACTOR shall keep and present to the PROFESSIONAL an itemized accounting together with appropriate supporting data. Unless otherwise specified herein, costs shall be limited to:
- (i) costs of labor, including social security, unemployment insurance, fringe

benefits required by agreement or custom, and worker's compensation insurance directly attributable to the change;

- (ii) costs of materials, supplies and equipment, including the cost of transportation, whether incorporated or consumed directly attributable to the change;
- (iii) rental costs of machinery and equipment, exclusive of hand tools, whether rented from CONTRACTOR or others directly attributable to the change;
- (iv) costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work directly attributable to the change; and
- (v) additional costs of supervision and field office personnel directly attributable to the change.

8.7.7 The amount of credit to be allowed by CONTRACTOR to the TOWN for a deletion or change which results in a net decrease in the contract price shall be the actual net cost as confirmed by the PROFESSIONAL architect. When there are both increases and decreases in the Work, the allowance for overhead and profit shall be figured on the basis of net increase, if any, of the change.

8.7.8 Pending final determination of the total cost of the Change Directive, amounts not in dispute shall be included in future invoices for payment, accompanied by the Change Order. For costs in dispute, the PROFESSIONAL architect shall make an interim determination for purposes of monthly certification for payment for those costs. Either party may then submit a claim according to other provisions contained herein.

8.8 **Necessity for Signed Writing.** No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the TOWN, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. CONTRACTOR understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

ARTICLE 9 TOWN'S PROFESSIONAL(S) AND CONSTRUCTION ADMINISTRATION

9.1 **TOWN'S Designated Professional Representative.** Unless otherwise directed by TOWN, one designated PROFESSIONAL shall act as TOWN'S design representative from the effective date of this Contract until one (1) year from the date of achievement of Substantial Completion.

9.1.1 The PROFESSIONAL so designated will be TOWN'S design representative during

performance of the Work and will consult with and advise TOWN on all design and technical matters.

9.1.2 The designated PROFESSIONAL will act as initial non-binding interpreter of the requirements of this Contract and as TOWN'S advisor on claims.

9.2 **Professional Site Visits.** The PROFESSIONAL(s) will visit the Site with sufficient frequency for familiarization with the progress and quality of the Work and to inspect the Work to determine compliance of the Work with (i) this Contract, including approved shop drawings and other submittals; (ii) the Construction Schedule; and (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi- public authorities and agencies having or asserting jurisdiction over the Project.

9.3 **Professional Rejection of Work.** The PROFESSIONAL(s) may disapprove or reject Work which does not comply with (i) this Contract including approved shop drawings and other submittals; or (ii) applicable laws, statutes, building codes, rules or regulations of any governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

9.4 **Professional Evaluations.**

9.4.1 The PROFESSIONAL(s) will review and evaluate the results of all inspections, tests and written reports required by this Contract and by any governmental entity having or asserting jurisdiction over the Project. The PROFESSIONAL(s) will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the PROFESSIONAL(s). The PROFESSIONAL(s) will promptly reject Work which does not conform to or comply with the testing requirements contained herein.

9.4.2 The PROFESSIONAL(s) may require inspection or testing of any Work in addition to that required by this Contract or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The PROFESSIONAL(s) will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the PROFESSIONAL(s).

9.5 **Professional Submittal Activities.** The PROFESSIONAL(s) will review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions within not more than fourteen (14) calendar days, and will not approve any submittals unless such submittals conform with (i) the Project design concept; (ii) this Contract; and (iii) Contract Price. PROFESSIONAL'S review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the

Construction Documents. CONTRACTOR remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques or assembly, and for performance of the Work.

- 9.6 **Professional Interpretations.** A PROFESSIONAL will, when requested to do so in writing by CONTRACTOR, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. PROFESSIONAL'S interpretations and decisions relating to artistic effect shall be final if not inconsistent with this Contract.
- 9.7 **Professional Change Order Activities.** The PROFESSIONAL(s) will consult with and advise TOWN concerning, and will administer and manage, all change order requests and change orders on behalf of TOWN.
- 9.8 **Professional Pay Application Activities.** The PROFESSIONAL will review applications for payment, including such accompanying data, information and schedules as the PROFESSIONAL requires, to determine the amounts due to CONTRACTOR and shall authorize payment by TOWN to CONTRACTOR in writing. After the Work is determined to be finally complete and the PROFESSIONAL determines that CONTRACTOR has completed the Work, the PROFESSIONAL will determine whether CONTRACTOR is entitled to final payment, and if so will certify such to the TOWN in writing.
- 9.9 **Professional Relationship to Contractor.** The duties, obligations and responsibilities of CONTRACTOR under this Contract shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of any PROFESSIONAL. CONTRACTOR shall not be a third-party beneficiary of any agreement by and between TOWN and any PROFESSIONAL. The duties of CONTRACTOR to TOWN shall be independent of, and shall not be diminished by, any duties or obligations of any PROFESSIONAL to TOWN.

ARTICLE 10 CONTRACTOR'S INSPECTION AND CORRECTION OF DEFECTIVE OR INCOMPLETE WORK

- 10.1 **Rejection and Correction of Work in Progress.** During the course of the Project, CONTRACTOR shall inspect and promptly, whether at the direction of PROFESSIONAL, TOWN, or CONTRACTOR itself, reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- 10.1.1 CONTRACTOR shall promptly correct or require the correction of all such rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed.
- 10.1.1.1 CONTRACTOR shall bear all costs of correcting Work, including additional testing and inspections and compensation for all services and expenses necessitated by such corrections for Work that does

not conform to the Construction Documents.

10.1.1.2 CONTRACTOR shall be compensated for all costs of correcting Work, including additional testing and inspections and compensation for all services and expenses, including but not limited to general conditions for extended time, necessitated by such correction for Work installed per the Construction Documents that is later determined by others to not comply with any applicable law, statute, building code, rule or regulation of any governmental, public or quasi-public authority or agency having jurisdiction over the project. CONTRACTOR is not responsible for conformance of the Construction Documents with any applicable laws, codes, statutes, rules or regulations.

10.12 CONTRACTOR shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of TOWN or other trade contractors or subcontractors caused by CONTRACTOR'S correction or removal of rejected Work, due to lack of conformance to the Construction Documents. If CONTRACTOR fails to correct any destroyed or damaged work, TOWN may take such steps as are necessary to repair or replace the destroyed or damaged work and deduct the cost thereof from this contract.

10.2 **Covered or Concealed Work.** If a portion of the Work has been covered, CONTRACTOR shall, if notified to do so by TOWN or PROFESSIONAL, uncover the designated portion for observation and then replace it.

1021 If the designated portion of the Work was covered contrary to the request of TOWN or PROFESSIONAL, or to requirements specifically expressed in the Construction Documents, CONTRACTOR shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.

1022 If the designated portion of the Work was covered prior to a specific request by TOWN or PROFESSIONAL that it remain uncovered, CONTRACTOR shall receive additional compensation for the costs of uncovering and replacement and modification of the construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.

10.3 **Acceptance of Non-conforming Work.** If TOWN prefers to accept Work which is not in accordance with the requirements of the Contract Documents, TOWN may do so instead of requiring its removal and correction, in which case the Construction Price shall be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 11

TOWN'S RIGHT TO STOP WORK OR RIGHT TO CARRY OUT WORK

11.1 If CONTRACTOR fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with this Contract, TOWN may,

by written notice, order the CONTRACTOR to cease and desist in performing the Work or any portion of the Work until the cause of the order has been eliminated to the satisfaction of the TOWN. Upon receipt of such instruction, CONTRACTOR shall immediately cease and desist as instructed by TOWN and shall not proceed further until the cause of the TOWN'S order has been corrected, no longer exists, or the TOWN instructs that the Work may resume.

11.1.1 CONTRACTOR shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause if such stoppages are determined to be the fault of the CONTRACTOR.

11.1.2 If CONTRACTOR fails or refuses within seven (7) calendar days to provide adequate assurance to TOWN that the cause of such instructions will be eliminated or corrected, then the TOWN shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another general contractor, and CONTRACTOR shall be responsible for any additional costs incurred by TOWN in performing such Work.

11.1.3 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the TOWN may have against CONTRACTOR.

11.2 If CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents and fails to commence and continue correction of such default or neglect within seven (7) calendar days after receipt of the written notice from TOWN to do so with diligence and promptness, TOWN may after such seven-day period give CONTRACTOR a second written notice to correct such deficiencies. The second written notice shall require CONTRACTOR to correct such default or neglect within three (3) business days of receipt of the written notice. If CONTRACTOR fails to correct such deficiencies TOWN may, without prejudice to other remedies available to TOWN, correct the deficiencies and issue a Change Order deducting from the Contract Price the reasonable cost of correcting such deficiencies including TOWN'S expenses and compensation for PROFESSIONAL'S additional services made necessary by the default, neglect or failure. Such action by TOWN and amounts charged to CONTRACTOR are both subject to prior approval of PROFESSIONAL. If payment then or thereafter due the CONTRACTOR are not sufficient to cover such amounts, CONTRACTOR shall pay the difference to TOWN.

ARTICLE 12 INSPECTION, CORRECTION OF WORK, AND PROJECT CLOSE OUT

12.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Substantial Completion inspection and the required Substantial Completion documentation and items have been produced.

12.1.1 When CONTRACTOR believes that the Work is substantially complete, it shall notify TOWN and the appropriate PROFESSIONAL that its Work is ready for a Substantial Completion inspection.

- 12.12 At or prior to the Substantial Completion inspection, CONTRACTOR will prepare and furnish to PROFESSIONAL a Declaration of Substantial Completion, which at a minimum must:
- (i) contain a blank for entry of the date of Substantial Completion, which date will fix the commencement date of warranties and guaranties and allocate between TOWN and CONTRACTOR responsibility for security, utilities, damage to the Work, and insurance;
 - (ii) include a list of items to be completed or corrected and state the time within which the listed items will be completed or corrected; and
 - (iii) contain signature lines for TOWN, CONTRACTOR and PROFESSIONAL.
- 12.13 Upon receipt of notification from CONTRACTOR the appropriate PROFESSIONAL will coordinate with TOWN and CONTRACTOR a date for inspection of the Work to determine whether the Work is substantially complete.
- 12.14 At inspection(s) to determine whether the Work is substantially complete, the PROFESSIONAL will:
- (i) inspect the Work;
 - (ii) list additional items to be completed or corrected; and
 - (iii) determine, in consultation with TOWN, whether Substantial Completion of the Work has occurred.
- 12.15 If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to TOWN until the Work is determined to be substantially complete.
- 12.16 On or prior to the required date of Substantial Completion, CONTRACTOR shall deliver to the appropriate PROFESSIONAL keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for TOWN'S occupancy and use of the Work for its intended purpose. The PROFESSIONAL will obtain and review Substantial Completion documentation and items, and will inform CONTRACTOR of any deficiencies.
- 12.17 When TOWN, CONTRACTOR and the appropriate PROFESSIONAL agree that the Work has passed the Substantial Completion inspection and CONTRACTOR has produced the required Substantial Completion documentation and items, they shall each sign the Declaration of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion.

The Declaration of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction. Failure of CONTRACTOR to include an item on the list does not alter the responsibility of CONTRACTOR to complete all Work in accordance with this Contract.

- 12.18 CONTRACTOR shall promptly correct the Work properly rejected by the PROFESSIONAL for failing to conform to the requirements of this Contract, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting the rejected Work shall be at CONTRACTOR'S expense.
- 12.19 Substantial Completion must be accompanied by a Certificate of Occupancy, unless the Certificate of Occupancy is unattainable outside of CONTRACTOR'S control.
- 12.2 **Final Completion.** Final Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Final Completion inspection and that CONTRACTOR has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due CONTRACTOR until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to TOWN by CONTRACTOR.
- 12.21 When CONTRACTOR believes the Work is finally complete, CONTRACTOR shall notify TOWN and the appropriate PROFESSIONAL that the Work is ready for Final Completion inspection.
- 12.22 Upon receipt of such notification from CONTRACTOR, the PROFESSIONAL will coordinate with TOWN and CONTRACTOR a date for inspection of the Work to determine whether the Work is finally complete.
- 12.23 At the Final Completion inspection to determine whether the Work is finally complete, the PROFESSIONAL will:
- (i) inspect the Work;
 - (ii) determine whether all items on the list, included with the Declaration of Substantial Completion have been satisfactorily completed and corrected;
 - (iii) determine whether the Work complies with (a) this Contract; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards.
 - (iv) determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and
 - (v) determine, in consultation with TOWN, whether the Work is finally complete.

- 1224 If the Work is not finally complete, CONTRACTOR shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to TOWN, until the Work is finally complete.
- 1225 On or prior to the date of Final Completion, CONTRACTOR shall deliver to the appropriate PROFESSIONAL the following Final Completion close-out documentation and items:
- (i) all operating and instruction manuals not previously produced during commissioning and required maintenance stocks;
 - (ii) two (2) sets of as-built drawings and markups;
 - (iii) certification and affidavit that all insurance required of CONTRACTOR beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to TOWN;
 - (iv) written consent of the surety(ies), if any, to final payment;
 - (v) full, final and unconditional waivers of construction liens, and release of security interests or encumbrances on the Project property from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim against TOWN or TOWN'S property;
 - (vi) full, final and unconditional certification and affidavit that all of CONTRACTOR'S obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;
 - (vii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;
 - (viii) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
 - (ix) a list of any item(s) due but unable to be delivered and the reason for non-delivery;
 - (x) spare parts and attic stock, if any; and
 - (xi) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.
- 1226 The appropriate PROFESSIONAL will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion

which are submitted by CONTRACTOR, and will immediately inform CONTRACTOR about any deficiencies and omissions.

ARTICLE 13 LICENSES, APPROVALS AND PERMITS

- 13.1 CONTRACTOR shall obtain all licenses, permits or approvals required for the Work at CONTRACTOR'S expense as part of the Contract Price.

ARTICLE 14 GOODS, PRODUCTS AND MATERIALS

- 14.1 **Quality of Materials.** CONTRACTOR shall furnish goods, products, materials, equipment and systems which:
- (i) comply with this Contract;
 - (ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;
 - (iii) are new (unless otherwise specified or permitted) and without apparent damage;
 - (iv) are of the quality, strength, durability, capacity or appearance required by the Construction Documents;
 - (v) are merchantable;
 - (vi) are free from defects; and
 - (vii) are in accordance with manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.
- 14.2 **Installation and Use of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case CONTRACTOR shall so inform TOWN and PROFESSIONAL and shall proceed as directed in writing by PROFESSIONAL, unless otherwise directed in writing by TOWN. CONTRACTOR shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.
- 14.3 **Unsuitable Materials.** CONTRACTOR shall inform TOWN of goods, products,

materials, equipment or systems which Contractor knows are unsuitable or unavailable. Approval by TOWN and PROFESSIONAL of substitute goods, products, materials, equipment or systems does not mean or imply final acceptance by TOWN and PROFESSIONAL if such items should be defective or not as previously represented.

- 14.4 **Brand Name or Alternate.** Notwithstanding the foregoing, if a product or service has been identified in the specifications by brand name, such identification is intended to be descriptive and not restrictive. However, if CONTRACTOR proposes to furnish an alternate product or service after this Contract has been fully executed, CONTRACTOR shall receive the written authorization from the PROFESSIONAL and TOWN prior to incorporating such alternate product or service into the Work. An alternative to the product/material specified will only be considered if the product/material is not readily available to meet the construction schedule. Also, such alternate will require cost comparison evidence and if found to be less expensive than the specified material, TOWN will be entitled to a credit for the cost difference. For purposes of this paragraph, an alternative shall be defined as a product or material differing substantially in quality and characteristics from the product or material set forth in the Contract Documents. If the Contract Documents specify an “or equal” product or material, an equal is defined as a product or material with the same quality or characteristics as that specified, but differing in brand name.
- 14.5 **Defective Materials.** If during or prior to construction operations TOWN or PROFESSIONAL rejects any portion of the Work on the grounds that the Work or materials are defective, the TOWN or PROFESSIONAL shall give the CONTRACTOR written notice of the defect. CONTRACTOR shall then have seven (7) calendar days from the date the notice is received to correct the defective condition.
- 14.6 **Security for the Project.** CONTRACTOR shall provide security for the Project, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work, whether store on or off site by Contractor, its subcontractors, materialmen or others under its supervision.
- 14.7 **Material Safety Data Sheets.** If any chemicals or materials or products containing toxic substances are to be used at any time during this contract, CONTRACTOR shall keep copies of all material safety data sheets on file with the contract documents located in the field office.
- 14.8 **Payment for Materials.** Unless otherwise provided in this Contract, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by CONTRACTOR with procedures satisfactory to TOWN to establish TOWN’S title to such materials and equipment or otherwise protect TOWN’S interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Nothing precludes TOWN from paying for materials directly in order to recognize a savings of sales tax.

ARTICLE 15
PERFORMANCE BOND AND PAYMENT BOND

15.1 Bond Requirements.

15.1.1 CONTRACTOR shall be required to provide payment and performance bonds prior to commencing the Work. The amount of the premiums for such bonds shall be included in the Construction Price. Performance and Payment Bonds shall be 100% of the contract amount and shall be executed on forms as mutually agreed upon between TOWN and CONTRACTOR. All original Performance and Payment Bonds will be submitted to TOWN for recording in the public records of Lake County, Florida, at the cost of CONTRACTOR. The bonds will be acceptable to TOWN only if the following conditions are satisfied:

- (i) The Surety is licensed to do business in the State of Florida;
- (ii) The Surety holds a Certificate of Authority authorizing it to write surety bonds in this State;
- (iii) The Surety has twice the minimum surplus and capital requirements required by the Florida Insurance Code at the time the contract is issued;
- (iv) The Surety has a current rating of A or A- as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc., if the contract price exceeds \$500,000, pursuant to Section 287.0935, Florida Statutes;
- (v) The Surety is otherwise in compliance with the Florida Insurance Code; and
- (vi) The Surety holds a currently valid Certificate of Authority issued by the United States Department of Treasury under 31 U.S.C. ss9304.

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

15.1.2 The CONTRACTOR shall not be required to provide a maintenance bond.

ARTICLE 16
INSURANCE

16.1 CONTRACTOR shall obtain and maintain, at CONTRACTOR'S expense, from a company or companies authorized to do business in the State of Florida and which are acceptable to TOWN, insurance containing the following selected types of coverage and

minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract by the CONTRACTOR or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable. CONTRACTOR shall provide TOWN proof of insurance prior to Work commencing. CONTRACTOR shall assure that its sub-contractors provide the same types of coverage and minimum limits of liability as required of CONTRACTOR and it is in effect at all times during this Contract.

- (i) General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/2,000,000
Products-Completed Operations	\$2,000,000
Personal & Adv. Injury	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$10,000
Contractual Liability	Included
Umbrella Liability	\$10,000,000 each occurrence/aggregate

- (ii) Automobile liability insurance, including owned, non-owned, and hire autos with the following minimum limits and coverage:

Combined Single Limit	\$1,000,000
-----------------------	-------------

- (iii) Worker’s compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers’ compensation (Federal, maritime, etc.). If not required by law to maintain workers compensation insurance, the vendor must provide a notarized statement that if he or she is injured, he or she will not hold the TOWN responsible for any payment or compensation.

- (iv) Employers Liability with the following minimum limits and coverage:

Each Accident	\$1,000,000
Disease-Each Employer	\$1,000,000
Disease-Policy Limit	\$1,000,000

- (v) Builders Risk Insurance with all-risk perils for 100% of the contract amount.
- (vi) Town of Montverde, a Florida municipality, shall be named as additional insured as their interest may appear on all applicable policies.
- (vii) Certificate(s) of Insurance shall provide for a minimum of thirty (30) days prior written notice to TOWN of any change, cancellation, or nonrenewal of the required insurance.

- (viii) Certificate(s) of Insurance shall identify the contract number in the Description of Operations section of the Certificate.
- (ix) Certificate of Insurance shall evidence a waiver of subrogation in favor of TOWN, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium by the TOWN.
- (x) Certificate holder shall be TOWN OF MONTVERDE.
- (xi) All self- insured retentions shall appear on the certificate(s) and shall be subject to the approval of TOWN. At the option of the TOWN, the insurer shall reduce or eliminate such self-insured retentions; or the vendor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.
- (xii) The TOWN shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the vendor and/or subcontractor providing such insurance.
- (xiii) CONTRACTOR shall be responsible for subcontractors and their Insurance. Subcontractors are to provide Certificates of Insurance to TOWN evidencing coverage and terms in accordance with the CONTRACTOR'S requirements.

- (xiv) Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.

Neither approval by the TOWN of any insurance supplied by CONTRACTOR or any subcontractor, nor a failure to disapprove that insurance, shall relieve the CONTRACTOR of full responsibility of liability, damages, and accidents as set forth herein.

- (xvi) If it is not possible for the CONTRACTOR to certify compliance, on the certificate of insurance, with all of the above requirements, then the CONTRACTOR is required to provide a copy of the actual policy endorsement(s) providing the required coverage and notification provisions.

ARTICLE 17 CONTRACTOR'S WARRANTIES AND GUARANTEES

- 17.1 **Two-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Contract, CONTRACTOR, upon request by TOWN or PROFESSIONAL, shall promptly correct all failures or defects in the Work for a period of two (2) years after the actual date of Substantial Completion, or the date of acceptance by TOWN, whichever is later.

17.1.1 CONTRACTOR shall schedule, coordinate and participate in a walk-through inspection of the Work one (1) month prior to the expiration of the two-year correction period, and shall notify TOWN and PROFESSIONAL, and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

17.1.2 CONTRACTOR shall be responsible for promptly correcting any deficiencies, at no cost to TOWN, within five (5) calendar days after TOWN notifies CONTRACTOR of such deficiency in writing.

17.1.3 Should CONTRACTOR fail to promptly correct any failure or defect, TOWN may take whatever actions it deems necessary to remedy the failure or defect and the CONTRACTOR shall promptly reimburse TOWN for any expenses or damages it incurs as a result of the CONTRACTOR'S failure to correct the failure or defect.

17.1.4 INTENTIONALLY DELETED.

- 17.2 **Express Warranties and Guarantees – Contractor.** In addition to the warranties and guarantees set forth elsewhere herein, CONTRACTOR shall expressly warrant and guarantee to TOWN:

- (i) that the Work complies with the Construction Documents;

- (ii) that all goods, products materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of the quality required by the Construction Documents and (c) merchantable; and
- (iii) that all management, supervision, labor and services required for the Work shall comply with this Contract and shall be and are performed in a workmanlike manner.
- (iv) All work shall be guaranteed for two (2) years after completion and acceptance unless otherwise specified. The guarantees are to be construed as being supplemental in nature and in addition to any and all other remedies available to TOWN under the laws of the State of Florida.

17.3 **Express Warranties and Guarantees – Subcontractors and Suppliers.** CONTRACTOR shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to TOWN and CONTRACTOR in a form identical to the warranties, guarantees and other undertakings set forth in this Contract, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of TOWN as well as CONTRACTOR.

17.4 **Non-Exclusivity and Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other statutory warranties, if any, and shall survive the TOWN'S payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.

17.5 **Non-Limitation.** Nothing contained in Paragraph 17.1 shall be construed to establish a period of limitation with respect to CONTRACTOR'S obligations under this Contract. Paragraph 17.1 relates only to CONTRACTOR'S specific obligations with respect to the Work, and has no relationship to the time within which CONTRACTOR'S contractual obligations under this Contract may be enforced, nor to the time within which proceedings may be commenced to establish CONTRACTOR'S liability with respect to any contractual obligations pursuant to Paragraph 17.1 or contained elsewhere herein.

17.6 **Commencement of Obligations.** Unless otherwise specified, all of CONTRACTOR'S warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents shall begin on the actual date of Substantial Completion.

ARTICLE 18 TERMINATION OR SUSPENSION OF CONTRACT

18.1 **Termination by TOWN for Cause.**

18.1.1 TOWN may terminate this Contract for cause if CONTRACTOR materially breaches this Contract by:

- a. Refusing, failing or being unable to properly manage or perform the Work;
- b. Refusing, failing or being unable to supply sufficient numbers of properly skilled workers or property materials, or maintain applicable schedules;
- c. Refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
- d. Disregarding applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of a public authority or quasi-public authority having jurisdiction; or
- e. Refusing, failing or being unable to substantially perform in accordance with the terms of any provision of the Contract Documents.

18.1.2 Upon the occurrence of any of the events described in 18.1.1 above, TOWN may give written notice to CONTRACTOR setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. TOWN may after such seven calendar day period give CONTRACTOR a second written notice to correct such deficiencies. The second written notice shall require CONTRACTOR to correct such default or neglect within three (3) business days of receipt of the written notice. At any time thereafter, if the CONTRACTOR fails to initiate the cure or if the CONTRACTOR fails to expeditiously continue such until complete, the TOWN may give written notice to the CONTRACTOR of immediate termination, and TOWN without prejudice to any other rights or remedies, may take any or all of the following actions:

- a. complete all or any part of the Work, including supplying workers, material and equipment which TOWN deems expedient to complete the Work;
- b. contract with others to complete all or any part of the work, including supplying workers, material and equipment which TOWN deems expedient to complete the Work;
- c. take such other action as is necessary to correct such failure;
- d. take possession of all materials, tools, construction equipment, and machinery on the site owned by CONTRACTOR, or leased by CONTRACTOR and paid for by TOWN;
- e. directly pay the CONTRACTOR'S subcontractors and suppliers compensation due to them from CONTRACTOR;
- f. finish the Work by whatever method TOWN may deem expedient; and
- g. require CONTRACTOR to assign CONTRACTOR'S right, title and interest in any or all of CONTRACTOR'S subcontracts or orders to TOWN.

18.1.3 If TOWN terminates this Contract for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth below in paragraph 18.3.

18.2 **Termination Due to Unavailability of Funds.** When funds are not appropriated or otherwise made available to support continuation of performance under this Contract, the Contract shall be cancelled and the CONTRACTOR shall be reimbursed for all Work

performed by CONTRACTOR, plus five percent (5%) overhead and profit thereon.

- 18.3 **Termination or Suspension for Convenience.** TOWN may at any time give written notice to CONTRACTOR terminating this Contract or suspending the Project, in whole or in part, for the TOWN'S convenience and without cause. If TOWN suspends the Project for convenience, CONTRACTOR shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.
- 18.4 **Contractor's Compensation When Terminated for Convenience.** If this Contract is (i) terminated by TOWN pursuant to 18.3; or (ii) suspended more than one (1) month by TOWN pursuant to 18.3, TOWN shall pay CONTRACTOR for all Work actually performed prior to the effective termination date, plus five percent (5%) overhead and profit thereon, and reasonable costs associated with termination, including but not limited to demobilization expenses. TOWN may further agree to additional compensation, if any, to CONTRACTOR.
- 18.5 **Contractor's Compensation when terminated for cause.** If this Contract is terminated by TOWN for cause, no further payment shall be made to CONTRACTOR until Final Completion of the Project. At such time, CONTRACTOR shall be paid the remainder of the Construction Price less all reasonable costs and damages incurred by TOWN as a result of the default of CONTRACTOR. CONTRACTOR shall additionally reimburse TOWN for any additional costs or expenses incurred.
- 18.6 Irrespective of the reason for termination or the party terminating, the total sum paid to the CONTRACTOR shall not exceed the Contract Price, as same may be adjusted pursuant to this Contract, reduced by the amount of payments previously made or deductions incurred pursuant to any other provision of this Contract, and shall in no event include duplication of payment.
- 18.7 Irrespective of the reason for termination or the party terminating, if this Contract is terminated, the CONTRACTOR shall, unless otherwise notified by TOWN,
- (i) immediately stop work;
 - (ii) terminate outstanding orders and subcontracts;
 - (iii) settle the liabilities and claims arising out of the termination of subcontractors and orders with amounts paid by TOWN; and
 - (iv) transfer title and deliver to TOWN such completed or partially completed Work, and, if paid for by TOWN, materials, equipment, parts, fixtures, information and such contract rights as the CONTRACTOR has.
- 18.8 The right to terminate or suspend the Work shall not give rise to a duty on the part of either TOWN or CONTRACTOR to exercise that right for the benefit of TOWN, CONTRACTOR or any other persons or entities.

- 18.9 If CONTRACTOR fails to file a claim within one (1) year from the effective date of termination, TOWN shall pay CONTRACTOR only for services actually performed and expenses actually incurred prior to the effective termination date.

ARTICLE 19 DISPUTE RESOLUTION

- 19.1 In the case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Contract or the breach thereof, the parties shall first attempt resolution through mutual discussion.
- 19.2 If the parties cannot resolve any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Contract or the breach thereof through mutual discussion, as a condition precedent to any litigation, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable resolution satisfactory to all parties.
- 19.3 TOWN and CONTRACTOR agree that pending the resolution of any dispute, controversy, or question, the TOWN and CONTRACTOR shall each continue to perform their respective obligations without interruption or delay, CONTRACTOR shall not stop or delay the performance of the Work, and TOWN shall make all undisputed payments, unless the amount in dispute, controversy or question will exceed the amount of undisputed payments.

ARTICLE 20 DAMAGES AND REMEDIES

- 20.1 CONTRACTOR shall, at its expense, promptly correct, repair or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Contract, or any other applicable statutory warranty or guarantee.
- 20.2 CONTRACTOR shall promptly reimburse TOWN for any reasonable, documented, and directly incurred out-of-pocket expenses or damages incurred by TOWN as a result of (i) CONTRACTOR'S failure to substantially perform in accordance with the terms of this Contract; (ii) deficiencies or conflicts in the Construction Documents attributable to CONTRACTOR or of which CONTRACTOR was or should have been aware; (iii) CONTRACTOR'S breach of the warranties and guarantees set forth in this Contract or any other applicable warranty or guarantee; or (iv) other acts or omissions of CONTRACTOR.
- 20.3 To the fullest extent permitted by law CONTRACTOR shall secure, defend, protect, hold harmless, and indemnify TOWN, and its employees, agents, officers and council members (related parties) for damages to persons or property caused in whole or in part by any act,

omission, or default of CONTRACTOR, its officers, directors, agents, or employees, arising from this Contract or its performance, or damages to persons or property caused in whole or part by any act, omission, or default of CONTRACTOR'S contractors, subcontractors, sub-subcontractors, materialmen, or agents or their respective employees. TOWN Such indemnification shall include claims or, damages resulting from statutory violation or punitive damages caused by or resulting from the acts or omissions of CONTRACTOR or any of CONTRACTOR'S contractors, subcontractors, sub-subcontractors, materialmen, or agents or their respective employees. Further, CONTRACTOR shall indemnify and hold harmless TOWN, its employees, council members, and officers, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of CONTRACTOR, its employees, or persons utilized in performance of this Contract.

- 20.4 TOWN'S selection of one or more remedies for breach of this Contract contained herein shall not limit the TOWN'S right to invoke any other remedy available to the TOWN under this Contract or by law.
- 20.5 CONTRACTOR shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead, or any indirect consequential damages.
- 20.6 Interest shall be calculated in accordance with Part VII, Chapter 218, Florida Statutes.

ARTICLE 21
CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between CONTRACTOR and TOWN concerning the Work are attached to this Contract, made a part hereof and consist of the following:

- 21.1 This Contract (pages 1 to , inclusive), and all attached documents, appendices and addenda.
- 21.2 All drawings and specifications as set forth in the Invitation to Bid for the Project shall be incorporated herein and made a part of this Contract and are attached hereto as Appendix A.
- 21.3 Certificates of Insurance of CONTRACTOR
- 21.4 Invitation to Bid documents including Addenda
- 21.5 Drawings prepared by GatorSkch, dated _____, and any revisions thereto, if any, (_____) dated (_____), as well as Drawings prepared by (_____) dated (_____) and any revisions thereto, if any, dated (_____).

- 21.6 The following which may be delivered or issued on or after the Effective Date of this Contract and are not attached hereto:
- a. Notice to Proceed.
 - b. Construction Change Directives.
 - c. Approved Change Orders
 - d. Performance Bond
 - e. Payment Bond
 - f. Proof of proper license
 - g. Permit(s) if any
- 21.7 The Contract Documents may only be amended, modified or supplemented by an amendment to this Contract signed by the parties.
- 21.8 Documents not included or expressly contemplated in this Article do not, and shall not, form any part of this Contract.
- 21.9 TOWN shall furnish CONTRACTOR with a copy of the Construction Documents, along with copies of the plans and specifications.
- 21.10 Conflicts. In the event of any conflict, discrepancy, or inconsistency among any of the Construction Documents, the following shall control:
- a. As between figures given on plans and scaled measurements, the figures shall govern;
 - b. As between large-scale plans and small-scale plans, the large-scale plans shall govern;
 - c. As between plans and specifications, the requirements of the specifications shall govern;
 - d. Provided, however, that among the plans and specifications provided by TOWN, the more stringent requirement, as determined by TOWN, shall take precedence over less stringent requirements regardless of which document the more stringent requirement resides.

ARTICLE 22

SPECIAL TERMS AND CONDITIONS

- 22.1 INTENTIONALLY DELETED.
- 22.2 **Independent CONTRACTOR.** CONTRACTOR agrees that it shall be acting as an independent contractor and shall not be considered or deemed to be an agent, employee, joint 36venture, or partner of TOWN. CONTRACTOR shall have no authority to contract for or bind TOWN in any manner and shall not represent itself as an agent of TOWN or as otherwise authorized to act for or on behalf of TOWN. Additionally, CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona

bona fide employee working solely for CONTRACTOR to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

22.3 **Public Entity Crimes.** A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a contractor, supplier, or subcontractor under a contract with any public entity in excess of the threshold amount provided in Florida Statutes, section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

22.4 **Prohibition against Contingent Fees.** CONTRACTOR warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract and that they have not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Contract.

22.5 **Public Records.**

A. All electronic files, audio and/or video recordings, and all papers pertaining to any activity performed by the provider for or on behalf of the TOWN shall be the property of the TOWN and will be turned over to the TOWN upon request. In accordance with Florida "Public Records" law, Chapter 119, Florida Statutes, each file and all papers pertaining to any activities performed for or on behalf of the TOWN are public records available for inspection by any person even if the file or paper resides in the CONTRACTOR'S office or facility.

B. IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 407-469-2681, townclerk@mymontverde.com 17404 Sixth Street, Montverde, FL 34756.

22.6 INTENTIONALLY DELETED.

ARTICLE 23 GENERAL CONDITIONS

23.1 This Contract is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Contract shall lie in Lake County, Florida, and jurisdiction shall be in the Circuit Court of Lake County, Florida. The parties waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.

- 232 Neither Party may assign any rights or obligations under this Contract to any other party unless specific written permission from the other party hereto is obtained.
- 233 The captions utilized in this Contract are for the purposes of identification only and do not control or affect the meaning or construction of any of the provisions hereof.
- 234 This Contract shall be binding upon and shall inure to the benefit of each of the parties and of their respective successors and permitted assigns. Nothing in this Contract is intended to or shall create a contractual relationship with, or any rights of cause of action in favor of, any third party against either TOWN or CONTRACTOR.
- 235 This Contract may not be amended, released, discharged, rescinded or abandoned, except by a written instrument duly executed by each of the parties hereto.
- 236 The failure of any party hereto at any time to enforce any of the provisions of this Contract will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Contract.
- 237 During the term of this Contract CONTRACTOR assures TOWN that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that CONTRACTOR does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discrimination in any form or manner against CONTRACTOR employees or applicants for employment. CONTRACTOR understands and agrees that this Contract is conditioned upon the veracity of this statement of assurance.
- 238 CONTRACTOR shall at all times comply with all Federal, State and local laws, rules and regulations.
- 239 The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof provided the intent of this Contract remains and this Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 23.10 Unless otherwise provided, all notices shall be in writing and considered duly given if the original is (i) hand delivered; (ii) delivered by facsimile; or (iii) sent by U.S. Mail, UPS or FedEx, postage prepaid. All notices shall be given to the addresses set forth above. Notices hand delivered or delivered by facsimile shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

(Signature pages to follow)

IN WITNESS WHEREOF, the parties hereto have signed this Contract.

CONTRACTOR: _____,

ATTEST:

BY: _____
(Signature)

WITNESSES:

NAME: _____
(Print)

TITLE: _____

DATE: _____

TOWN:

TOWN OF MONTVERDE, FLORIDA

Paul Larino, Town Manager

DATE: _____

ATTEST:

Sandy Johnson, Town Manager

**APPENDIX A SUB
CONTRACTOR'S PERSONNEL CHART**

SUBCONTRACTOR: _____.

Project Manager: _____.

QA/QC: _____.

Project Superintendent: _____.

APPENDIX B
COMPENSATION SCHEDULE - SCHEDULE OF VALUES

APPENDIX C
SUBCONTRACTOR'S SUB-CONTRACTORS, IF ANY,
AND SUPPLIERS CHART

Sub-contractors:

Suppliers:

APPENDIX D
SCOPE OF WORK AND PLANS AND SPECIFICATIONS

**CONTRACT BETWEEN
TOWN OF MONTVERDE, FLORIDA AND
[INSERT CONTRACTOR NAME].**

THIS CONTRACT is dated as of the _____ day of _____ in the year 20__ by and between the **TOWN OF MONTVERDE**, Florida, a municipal corporation, 17404 Sixth Street, Montverde, FL 34756, hereinafter called the **TOWN**, and **[INSERT CONTRACTOR NAME]**, [INSERT ADDRESS], Florida [INSERT ZIP CODE] hereinafter called the **CONTRACTOR**.

ADDRESSES AND AUTHORIZED REPRESENTATIVES

The authorized representatives and addresses of the TOWN and CONTRACTOR and PROFESSIONAL are:

TOWN::

Representative: Paul Larino
Mailing Address: P.O. Box 560008.
Physical Address: 17404 Sixth St.
State, Zip: Montverde, FL 34756
Office: 407-469-2681
Fax: 407-469-2773
E-mail: townmanager@mymontverde.com

CONTRACTOR:

Representative:
Mailing Address:.
Physical Address:
TOWN, State, Zip:
Office:
Fax:
E-mail:
License #:

PROFESSIONAL (Architect) (Designated Professional):

Representative: Michael Latham
Mailing Address: 1000 E Highway 50 | Ste. 201A
Physical Address: 1000 E Highway 50 | Ste. 201A
TOWN, State, Zip: Clermont, Florida 34711
Office: 407-608-5677
Fax: 888-599-4814
E-mail: mblatham@gatorsketch.com
License #: AA26002310

RECITALS

WHEREAS, TOWN intends to construct the Work and is engaging the CONTRACTOR to perform certain labor, supervision and services and provide certain equipment, goods and materials for the Work.

WHEREAS, the TOWN and CONTRACTOR each acknowledge that it will act in good faith in carrying out its duties and obligations.

WHEREAS, CONTRACTOR was chosen as CONTRACTOR pursuant to sealed bid under Section 287.057, Florida Statutes, following the guidelines set forth under such statute.

WHEREAS, CONTRACTOR was found to be most responsive, responsible, low bidder to provide construction services for the Work, **Bid No. 2024-06**.

WHEREAS, the CONTRACTOR desires to perform such construction services subject to the terms of this Contract.

WHEREAS, the TOWN'S engagement of the CONTRACTOR is based on CONTRACTOR'S representations to the TOWN that it (i) is experienced in the type of labor and services the TOWN is engaging CONTRACTOR to perform, (ii) is authorized and licensed to perform the type of labor and services for which it is being engaged in the State and locality in which the Project is located; (iii) is qualified, willing and able to perform construction services for the Work; and (iv) has the expertise and ability to provide the type of labor and services for which it is being engaged, and which will comply with the requirements of all governmental, public authorities and agencies having or asserting jurisdiction over the Work.

WHEREAS, TOWN and CONTRACTOR each acknowledges that it has reviewed and familiarized itself with this Contract, including the documents enumerated in Article 21 and agrees to be bound by the terms and conditions contained therein.

WHEREAS, TOWN has engaged one or more Professionals to perform architectural and/or engineering services for the Work, including preparation of Site-specific Construction Documents.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, promises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

ARTICLE 1 WORK

- 1.1 CONTRACTOR shall furnish or cause to be furnished, and pay for out of the Construction Price, all management, supervision, financing, goods, products, materials, equipment, systems, labor, services, permits, licenses, construction machinery, water, heat, utilities, transportation and other facilities necessary for proper execution and completion of the Work (or Scope of Services) in accordance with all the terms and conditions of the Contract Documents. The Work is generally described as follows:

SEE EXHIBIT A

As part of construction of the new library as per plans and specifications

ARTICLE 2 MANNER OF PERFORMING WORK AND REQUIRED SERVICES

- 2.1 On the terms and conditions set forth in this Contract, TOWN hereby engages CONTRACTOR to perform and complete all Work in a professional and workmanship like manner, and shall conform to the industry standards in Central Florida for construction of a public safety complex. All materials being utilized in the construction and all workmanship shall be completed in accordance with the plans and specifications. CONTRACTOR shall perform and complete its obligations under this Contract using its best skill and attention, and covenants with TOWN to furnish management, supervision, coordination, labor and services which (i) expeditiously, economically and properly completes the Work in the manner most consistent with the Construction Documents and this Contract, (ii) complies with the Construction Documents and this Contract; and (iii) in accordance with the industry standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.
- 2.2 **General project services:**
- 2.2.1 CONTRACTOR agrees to provide all services required to complete its WORK in an expeditious and economical manner consistent with this Contract.
- 2.2.2 CONTRACTORS shall, in consultation with TOWN, PROFESSIONAL and any of CONTRACTORS subcontractors, endeavor to develop, implement and maintain a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and upon completion, the Project is deemed a success by all parties.
- 2.2.3 TOWN'S designated PROFESSIONAL architect will represent the TOWN in dealing with the CONTRACTOR on all design and technical matters, and will administer this Contract. TOWN and CONTRACTOR shall communicate with each other in the first instance

through the PROFESSIONAL architect and/or the TOWN's Project Manager. The terms TOWN and TOWN'S Project Manager shall be synonymous for the purpose of this document. The TOWN'S Project Manager shall have full access to the construction site. The TOWN'S Project manager shall adhere to CONTRACTOR'S safety requirements and shall not directly interfere, direct, or participate in the construction work. The TOWN'S instructions to the CONTRACTOR will be issued through the PROFESSIONAL architect RFI or ASI. The TOWN'S Project Manager and the PROFESSIONAL will endeavor to ensure that one or the other is available for consultation at all times throughout this contract period.

2.2.4 CONTRACTOR understands and acknowledges the TOWN'S intent that the Project will be complete by the Date of Substantial Completion. CONTRACTOR shall timely prepare and submit the CPM Schedule from the date of Notice to Proceed through the Final Completion date for the TOWN'S review and approval. This schedule is to be updated monthly. Failure to submit or update the schedule to reflect current field conditions shall result in non-payment or delay of payment until the CPM is received.

23 **Construction Services:**

2.3.1 CONTRACTOR shall supervise and direct its scope of the Work. At a minimum, CONTRACTOR shall:

- i. Provide an on-site job superintendent who shall speak, read and write English, and who shall supervise all of CONTRACTOR'S trades and direct all its construction activities, establish and maintain construction schedules for its Work and submit to TOWN daily progress reports. The superintendent shall not be a hands-on tradesman. TOWN shall retain the authority to remove the superintendent with cause with ten calendar day's written notice. The superintendent shall stay on the job through 100% of construction of its Work and final punch-list items related to CONTRACTOR'S Work. Any person employed by the CONTRACTOR or its subcontractor who is found to be conducting themselves in a detrimental manner shall be removed from the job site immediately upon notification to the superintendent.
- ii. Coordinate its subcontractors and suppliers, and supervise all construction services furnished by CONTRACTOR.
- iii. Be familiar with all trade divisions and subcontractors' scopes of Work, all applicable building codes, the Construction Documents, and this Contract.
- iv. Check and approve shop drawings and materials delivered to the site relating to its Work, regularly inspect its Work and confer with TOWN to determine its compliance with the Construction Documents and this Contract.
- v. Prepare and maintain Project records, process documents, and staff the site field office.

2.3.2 CONTRACTOR shall insure that the Work is in compliance with the Construction Documents and complies with any applicable law, statute, building code, rule or regulation of any public authority or agency having jurisdiction over the Project.

- 2.3.3 CONTRACTOR shall comply with and cause its subcontractors and suppliers to comply with the Project Construction Schedule and applicable sub-schedules. CONTRACTOR shall review schedules from other subcontractors and suppliers, and coordinate as necessary with other subcontractors, and enforce compliance with all applicable schedules to insure timely completion of its Work. If at any time its Work is delayed, CONTRACTOR shall notify TOWN as to the probable causes for the delay and possible alternatives, and make recommendations to minimize expense to TOWN.
- 2.3.4 The PROFESSIONAL architect will visit the Project Site at intervals appropriate to the state of construction and with sufficient frequency to familiarize itself with the progress and quality of the Work and to inspect the Work. The PROFESSIONAL architect's interpretation and decisions shall be final regarding the Construction Documents and the Work.
- 2.3.5 All material, workmanship, and equipment must be subject to the inspection and approval of the TOWN's Project Manager and PROFESSIONAL architect.

24 INTENTIONALLY DELETED.

25 CONTRACTOR shall, prior to the execution of this Contract, prepare and attach as **Appendix A** the Contractor's Personnel Chart which lists by name, job category and responsibility the CONTRACTOR'S primary employees who will work on the Project. CONTRACTOR shall promptly inform TOWN in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). TOWN shall have the right to reject any proposed replacement for reasonable cause.

26 CONTRACTOR (i) shall within ten (10) days of the Notice to Proceed relating to CONTRACTOR'S Work, prepare and provide TOWN the Contractor's Subcontractors and Suppliers Chart which lists by name and general Project responsibility each subcontractor and supplier who will be utilized by CONTRACTOR to provide goods or services with respect to the Project; (ii) shall not enter into any agreement with any subcontractor or supplier to which TOWN raises a reasonable, timely objection with full compensation to be paid CONTRACTOR, with mark-up, for any premium costs in changing Subcontractors or Suppliers at TOWN'S direction; and (iii) shall promptly inform TOWN in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). TOWN shall have the right to reject any proposed replacement with full compensation to be paid the CONTRACTOR, with mark-up, for any premium costs in changing subcontractors or suppliers at TOWN'S direction.

27 CONTRACTOR shall utilize the U.S. Department of Homeland Security's E-Verify system in accordance with the terms governing use of the system to confirm the employment eligibility of:

- A. All persons employed by CONTRACTOR during the term of this Contract to perform employment duties within Monverde; and

- B. All persons, including subcontractors, assigned by the CONTRACTOR to perform work pursuant to the contract.

28 INTENTIONALLY DELETED.

29 CONTRACTOR acknowledges its continuing duty to review and evaluate the Construction Documents, from the perspective of a licensed contractor and not a design professional, during the performance of its services and shall immediately notify the TOWN and PROFESSIONAL architect about any problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents, and variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations. Notwithstanding the foregoing or anything contained in this Contract to the contrary, CONTRACTOR shall not be responsible for any problems, conflicts, defects, deficiencies, inconsistencies or omissions contained in or between the Construction Documents, or for any drawings, plans, or specifications prepared by the TOWN or any PROFESSIONAL but only if CONTRACTOR has notified the TOWN and PROFESSIONAL as required herein and PROFESSIONAL has not issued clarification to CONTRACTOR, or for the work of any design professional, separate contractor, supplier, or consultant engaged directly by the TOWN.

210 Schedule Requirements.

2.10.1 The Construction Schedule shall include all pertinent dates and periods for timely completion of the Work.

210.1.1 Unless otherwise directed and approved by TOWN, the CONTRACTOR shall prepare the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.

210.1.2 The Construction Schedule shall include (i) the date of the Notice to Proceed, (ii) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (iii) any guideline and milestone dates required by TOWN; (iv) any applicable subcontractor and supplier subschedules; (v) a submittal schedule which allows sufficient time for review of documents and submittals; (vi) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and (vii) required decision dates.

210.1.3 By reviewing the Construction Schedule, TOWN and PROFESSIONAL do not assume any of CONTRACTOR'S responsibility.

210.1.4 CONTRACTOR shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. If the actual status is behind when compared against the Construction Schedule, then the CONTRACTOR shall immediately discuss the status of the Work with

the PROFESSIONAL so that proper overall management may be provided.

2.10.15 CONTRACTOR shall periodically and in all instances when CONTRACTOR anticipates performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare an updated Construction Schedule. The updated Construction Schedule shall be accompanied by a narrative report explaining in detail any modifications of the critical path schedule, reasons for modifications, report corrective action taken or proposed and any other pertinent information to explain how to avoid delay in delivering the work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by TOWN.

2.10.2 Delay in Performance.

2.10.21 CONTRACTOR expressly agrees to complete the Work within the time specified, subject to extensions of time as provided herein.

2.10.22 CONTRACTOR shall determine and promptly notify CONTRACTOR and PROFESSIONAL in writing when it believes adjustments to the required dates of Substantial Completion or Final Completion, or other milestone dates required by TOWN, if

any, are necessary, but no such adjustments shall be effective unless approved in writing by TOWN and PROFESSIONAL, such approval not to be unreasonably withheld. TOWN may, but is not required to, accept the CONTRACTOR'S adjustments.

2.11 **Subcontractor / Supplier Contracts.** CONTRACTOR shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with this Contract. It is the intent of TOWN and CONTRACTOR that the obligations of Contractor's subcontractors and suppliers inure to the benefit of TOWN and CONTRACTOR, and that TOWN be a third-party beneficiary of CONTRACTOR'S agreements with its subcontractors and suppliers.

2.11.1 CONTRACTOR shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of this Contract, with financial information redacted, to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of this Contract available to its respective subcontractors and suppliers.

2.11.2 CONTRACTOR shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract that are included by reference in its written contract with CONTRACTOR, and that it will abide by those terms, conditions and requirements.

2.11.3 CONTRACTOR'S written contracts with its subcontractors and suppliers shall be

consistent with the terms of this Contract and shall include the acknowledgment and agreement of each subcontractor or supplier that TOWN is a third-party beneficiary of the contract. CONTRACTOR'S agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Contract, and upon request of TOWN, CONTRACTOR'S subcontractors and suppliers will perform services for TOWN.

ARTICLE 3 CONTRACT TIME/DAMAGES FOR DELAY

- 3.1 Time for Performance.
 - 3.1.1 Commencement of Construction. CONTRACTOR shall commence construction of its scope of the Work within ten (10) calendar days of receipt of the Notice to Proceed, hereinafter the "Commencement Date".
 - 3.1.2 Substantial Completion. CONTRACTOR shall accomplish Substantial Completion of its scope of the Work on or before 365 calendar days (the "required date of Substantial Completion") from the issuance of the Notice to Proceed.
 - 3.1.3 Final Completion. CONTRACTOR shall accomplish Final Completion of its scope of the Work on or before 30 calendar days from the date of Substantial Completion, hereinafter the "required date of Final Completion".
- 3.2 Construction Schedule. CONTRACTOR shall no later than ten (10) calendar days after issuance of the Notice to Proceed prepare and submit a preliminary Construction Schedule to TOWN and PROFESSIONAL architect for their review and acceptance.
- 3.3 CONTRACTOR recognizes that time is of the essence of this Contract and that TOWN will suffer financial loss if the Work is not completed within the times specified above, plus any extensions thereof approved in a change order or an addendum to this Contract and signed by TOWN. CONTRACTOR acknowledges that proving the actual loss and damages suffered by TOWN if the Work is not completed on time is impracticable and not susceptible to exact calculation. Accordingly, instead of requiring any such proof, CONTRACTOR agrees that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay TOWN \$2,125 (\$1,750 + 0.01% of contract amount exceeding \$6,000,000) for each calendar day that expires beyond the time specified in paragraph 3.1 above for Substantial Completion, until CONTRACTOR achieves Substantial Completion. \$5,000 of the Contract Price shall be consideration for inclusion of this Liquidated Damages provision. The foregoing liquidated damages are TOWN'S sole remedy for delays caused by CONTRACTOR.
- 3.4 Intentionally deleted.

ARTICLE 4 CONTRACT PRICE

- 4.1 TOWN shall pay and CONTRACTOR shall accept, as full and complete payment for the

CONTRACTOR'S timely and complete performance of the Work in accordance with the Contract Documents the fixed price of _____ DOLLARS AND 00/100 (\$ _____ .00) ("Contract Price").

- 4.2 The CONTRACTOR agrees that the Contract Price is a fixed price and agrees to perform all of the WORK as described in the CONTRACT DOCUMENTS, subject to additions and deductions by Change Order. The TOWN shall pay the CONTRACTOR only for the Contract Price.
- 4.3 Prior to execution of this Contract, CONTRACTOR shall prepare and present to TOWN and PROFESSIONAL architect the Contractor's Compensation Schedule which includes, the Schedule of Values for payment of the Contract Price on a lump sum basis for each of the major [CSI] divisions of construction. The Schedule of Values must reflect total Contract Price. The Compensation Schedule, once approved, shall be attached hereto and incorporated herein as **Appendix B**.

ARTICLE 5 PAYMENT PROCEDURES

- 5.1 On the 1st business day of each month, CONTRACTOR shall submit applications for payment to PROFESSIONAL architect at mblatham@gatorsketch.com who will process for payment for Work completed and in duplicate to TOWN's Project Manager, _____. Each application shall contain the designation "**Town of Montverde Library Project**" and shall signify the percentage complete. Attachments to the applications for payment shall identify critical, descriptive data, which reflects all construction activities completed to date for review of the PROFESSIONAL architect and TOWN. The CONTRACTOR shall be required to submit an updated Critical Path Method (CPM) schedule with the monthly applications for payment. The CPM is a requirement for payment. Failure to submit or update the schedule to reflect current field conditions shall result in non-payment or delay of payment until the CPM is received.
- 5.2 The TOWN shall make payment on all invoices in accordance with the Florida Prompt Payment Act, sections 218.70 through 218.79, Florida Statutes. All requests for payment of retainage shall be in accordance with the Florida Prompt Payment Act.
- 5.3 Progress payments will be made in an amount equal to 90% of the Work completed (with the balance being retainage), but, in each case, less the aggregate of payments previously made and less such amounts as PROFESSIONAL architect may determine or TOWN may withhold, including but not limited to liquidated damages, all pursuant to the terms of this Contract. The date on which payment is due shall be referred to as the "Payment Date". Prior to final payment the CONTRACTOR shall provide all contract close out documents including but not limited to as-builts, operating and maintenance manuals, and warranties. Additionally, the CONTRACTOR must complete all punch-list items prior to final payment.
- 5.3.1 CONTRACTOR shall prepare a list of items to be rendered complete, satisfactory, and acceptable within thirty (30) calendar days after reaching

Substantial Completion. Failure of the CONTRACTOR to include any corrective work or pending items not yet completed on the list developed pursuant to this section does not alter the responsibility of the CONTRACTOR to complete all construction services set forth herein. Upon completion of all items on the list, the CONTRACTOR may submit a payment request with its next monthly invoice for all remaining retainage withheld by TOWN. If a good-faith dispute exists as to whether one or more items have been completed pursuant to this Contract for Construction, TOWN may continue to withhold an amount not to exceed one hundred fifty percent (150%) of the total costs to complete the remaining items. The CONTRACTOR'S project representative shall be required to review these estimates with TOWN and sign the estimate in agreement.

- 54 Other than as set forth in this Contract and payment of the Contract Price, the CONTRACTOR shall not be entitled to additional payment for any expenses, fees, or other costs it may incur at any time and in connection with its performance hereunder. The CONTRACTOR hereby agrees that the Contract Price is fully loaded and includes all overhead common expenses, travel expenses, administrative and technical support expenses and computer expenses, and administrative expenses, including but not limited to:
- 54.1 costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by CONTRACTOR at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by CONTRACTOR. Cost for items used by CONTRACTOR shall mean fair market value;
 - 54.2 costs incurred to provide CONTRACTOR safety costs;
 - 54.3 costs of removal of CONTRACTOR'S debris from the site;
 - 54.4 costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service and reasonable petty cash expenses of the site office;
 - 54.5 that portion of the reasonable expenses of CONTRACTOR'S personnel incurred while travelling in discharge of duties directly connected with the Work;
 - 54.6 sales, use or similar taxes imposed by a governmental authority and paid by the CONTRACTOR and directly related to the Work.
 - 54.7 data processing costs directly related to the Work; however, these costs shall not include any hardware, software, or CADD costs;
 - 54.8 expenses incurred in accordance with CONTRACTOR'S standard personnel policy

for relocation and temporary living allowances of personnel required for the Work;

- 54.9 rental charges for machinery, equipment, and tools not customarily owned by construction workers;
- 54.10 wages, salaries, bonuses and incentive compensation of CONTRACTOR'S supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on or off the Project Site, including all company overhead and expenses; and
- 54.11 cost of fringe benefits, constructions, assessments and taxes, including for example such items as Unemployment Compensation and Social Security, to the extent that such cost is required by law and is based on the compensation paid to CONTRACTOR'S employees.
- 54.12 Should CONTRACTOR be in default of this Contract, PROFESSIONAL may withhold all or part of an application for payment to the extent reasonably necessary to protect TOWN. If PROFESSIONAL is unable to certify payment in the amount of the application, PROFESSIONAL shall notify CONTRACTOR and TOWN as provided for herein. If CONTRACTOR and PROFESSIONAL cannot agree on a revised amount, PROFESSIONAL shall promptly authorize payment for the amount which PROFESSIONAL is able to make such representations to TOWN. PROFESSIONAL may also withhold payment or, because of subsequently discovered evidence, may nullify the whole or part of an application for payment previously issued, to such extent as may be necessary in PROFESSIONAL'S opinion to protect TOWN from loss for which CONTRACTOR is responsible, including loss resulting from its acts and omissions, because of
 - (i) defective Work not remedied;
 - (ii) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to TOWN is provided by CONTRACTOR;
 - (iii) failure of CONTRACTOR to make payments properly to subcontractors for labor, materials or equipment;
 - (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
 - (v) damage to TOWN or other contractor;
 - (vi) reasonable evidence that the Work will not be completed within dates established in the Construction Schedule due to the fault of CONTRACTOR, and that the unpaid balance would not be adequate to cover liquidated damages for the anticipated delay; or
 - (vii) persistent failure to carry out the Work in accordance with this Contract.

55 **Right to Refuse Payment.** PROFESSIONAL'S approval of CONTRACTOR'S invoice shall not preclude TOWN from exercising any of its remedies under this Contract. In the event of a dispute, payment shall be made in accordance with Part VII, Chapter 218, Florida Statutes, for amounts not in dispute, subject to any setoffs claimed by TOWN. TOWN, to the extent permitted by Part VII, Chapter 281, Florida Statutes, shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to CONTRACTOR due to:

- (i) CONTRACTOR'S failure to perform the Work in compliance with the requirements of this Contract or any other agreement between the parties;
- (ii) CONTRACTOR'S failure to correctly and accurately represent the Work performed in a payment request, or otherwise;
- (iii) CONTRACTOR'S performance of the Work at a rate or in a manner that, in TOWN'S opinion, is likely to result in Substantial Completion or Final Completion being inexcusably delayed;
- (iv) Contractor's failure to use funds previously paid CONTRACTOR by TOWN, to pay CONTRACTOR'S Project-related obligations including, but not limited to, CONTRACTOR'S subcontractors, materialmen, and suppliers;
- (v) claims made, or likely to be made, against TOWN or its property;
- (vi) loss caused by CONTRACTOR or CONTRACTOR'S subcontractors, or suppliers, or
- (vii) CONTRACTOR'S failure or refusal to perform any of its obligations to TOWN.

56 **Compensation of Contractor's Subcontractors and Suppliers.** Upon receipt of payment from TOWN, CONTRACTOR shall pay each of its subcontractors and suppliers out of the amount received by CONTRACTOR on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to CONTRACTOR on account of such entity's portion of the Work. Except as otherwise may be provided by law, TOWN shall have no obligation to pay, and shall not be responsible for payments to, CONTRACTOR's subcontractors and suppliers.

57 **Final Payment.** Prior to being entitled to receive final payment, and as a condition precedent thereto, CONTRACTOR must achieve Final Completion. TOWN shall, subject to its rights set forth in this Contract, make final payment of all sums due CONTRACTOR in accordance with Part VII, Chapter 218, Florida Statutes.

ARTICLE 6 TOWN RESPONSIBILITIES

61 TOWN, through its PROFESSIONAL, shall promptly review the deliverables and other

materials submitted by CONTRACTOR and provide direction to CONTRACTOR as needed.

- 62 TOWN shall pay CONTRACTOR, in accordance with the provisions of this Contract, for required services timely submitted and approved and accepted by TOWN in accordance with the terms of this Contract and the Contract Documents.
- 63 TOWN will provide an on-site office for use of CONTRACTOR.
- 64 TOWN will provide temporary utilities to the site.

ARTICLE 7 CONTRACTOR'S REPRESENTATIONS

CONTRACTOR makes the following representations upon which TOWN has relied:

- 7.1 CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in Exhibit D.
- 7.2 CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site surface conditions that may affect costs, progress, and performance of the Work.
- 7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- 7.4 CONTRACTOR has carefully studied the engineer's drawings from the perspective of a licensed contractor and not a design professional, and is aware of the nature of the Work to be performed.
- 7.5 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- 7.6 CONTRACTOR has given PROFESSIONAL architect written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the CONTRACTOR Documents, pursuant to CONTRACTOR'S review from the perspective of a licensed contractor and not a design professional, and the written resolution thereof by PROFESSIONAL architect is acceptable to CONTRACTOR
- 7.7 The Contract Documents appear to be generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work. CONTRACTOR acknowledges and represents it has not relied, and does not and will not rely, upon any representations or warranties by TOWN concerning Contract Documents, as no such representations or warranties have been or are hereby made.
- 7.8 CONTRACTOR understands and agrees that the requirements established by the

Construction Documents shall be considered as the minimum which will be accepted.

ARTICLE 8 CHANGE ORDERS AND CHANGES TO THE WORK

- 8.1 **Change Order Requests.** Any party to the construction process may request changes to the Work, compensation or applicable schedules after execution of this Contract, and without invalidating this Contract. Unless otherwise specified herein, the PROFESSIONAL architect shall prepare the change orders and construction change directives. All Change Order requests shall be in writing and approved prior to the work which is the subject of the Change Order being completed, unless otherwise stated herein.
- 8.1.1 With respect to such requests for changes by the CONTRACTOR, CONTRACTOR shall prepare and submit written change order requests to the designated PROFESSIONAL architect and TOWN.
- 8.1.2 INTENTIONALLY DELETED.
- 8.1.3 When requested to do so, CONTRACTOR shall prepare and submit to a PROFESSIONAL drawings, specifications or other data in support of a change order request.
- 8.1.4 Each change order shall include time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project.
- 8.2 **TOWN-Directed Changes.** TOWN may unilaterally direct CONTRACTOR to implement changes in the Work so long as the Work TOWN is requiring is not outside of the general scope of this Contract, and CONTRACTOR, upon written direction from TOWN, shall proceed with such change.
- 8.3 **Professional-Directed Changes.** A Professional, without the TOWN'S prior approval, may authorize or direct CONTRACTOR to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and CONTRACTOR shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the CONTRACTOR.
- 8.4 **Administration of Changes.** The PROFESSIONAL architect and TOWN will administer and manage all change order requests and change orders and will prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and change orders.
- 8.5 **Compensation for Changes.** With respect to all change order requests involving credit to the TOWN or additional compensation to CONTRACTOR, CONTRACTOR shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare and itemized accounting

together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the designated PROFESSIONAL.

85.1 If price quotations for change order requests are determined by the PROFESSIONAL architect to be unreasonable, CONTRACTOR shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the PROFESSIONAL determines the quotation is unreasonable, the TOWN may require that the subject Work be performed on a time and material basis.

85.2 CONTRACTOR and its subcontractors and suppliers shall not be allowed any additional compensation for any costs, fees or expenses incurred in performing services already required by this Contract, and shall not be entitled to additional reimbursement for home-office, other non-job site or indirect overhead expenses, or tools necessary for construction.

85.3 It is the responsibility of CONTRACTOR to review and approve all pricing of additional work required of its subcontractors and suppliers.

85.4 Additional work which is not part of the Contract Documents and which does not impact the schedule shall require an executed change order and is not entitled to an extension of time but CONTRACTOR shall be reimbursed the actual incurred costs and expenses paid to subcontractors and suppliers plus a maximum markup to TOWN of ____ percent (____%) to cover overhead and profit.

8.5.4.1 CONTRACTOR'S subcontractor and sub- subcontractor change order markup is not to exceed _____ percent (____%).

85.5 Additional work which is not part of the Contract Documents and which does impact the schedule shall require a change order and CONTRACTOR is entitled to an extension of time and the actual incurred costs and expenses paid to subcontractors and suppliers plus a maximum markup to TOWN of ____ percent (____%) to cover overhead and profit.

8.5.5.1 CONTRACTOR'S subcontractor and sub- subcontractor change order markup is not to exceed ____ percent (____%).

8.6 **Performance of Changes.** Upon receipt of a field order or change order, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.

8.7 **Disputes Regarding Changes.**

8.7.1 Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change

shall be carried out if the TOWN issues a Construction Change Directive. No claim shall be prejudiced by performance of the Work so long as the TOWN is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the TOWN recites the reasons for its dispute in the written notice. Failure to notify the TOWN in writing shall constitute a waiver of any claim resulting from the change.

- 8.7.2 In the event a change order request is approved by the TOWN in the absence of an agreement as to cost, time, or both, the appropriate PROFESSIONAL will (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the TOWN'S behalf; (iii) take such other action as may be reasonably necessary or as the TOWN may request; and (iv) make a written recommendation to the TOWN concerning any appropriate adjustment in the Construction Price or time.
- 8.7.3 A Construction Change Directive is a written order prepared by the PROFESSIONAL and signed by the TOWN and the PROFESSIONAL, directing a change in the Work prior to the agreement on any change in the contract price, time or both. The issuance of a Construction Change Directive shall be used in the absence of agreement on the terms of a Change Order. If the Directive provides for a change in the contract price, the adjustment shall be based on one of the following:
- (i) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - (ii) unit prices stated in the Contract Documents or subsequently agreed upon;
 - (iii) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 - (iv) as set forth below.
- 8.7.4 CONTRACTOR shall promptly proceed with the Work upon receipt of a Construction Change Directive, and shall immediately advise the PROFESSIONAL of any disagreement with the method of compensation set forth in the Directive.
- 8.7.5 CONTRACTOR shall sign the Construction Change Directive if CONTRACTOR agrees with the adjustment in the time or contract price. Upon signature, the Construction Change Directive shall be effective as a Change Order.
- 8.7.6 If CONTRACTOR does not respond promptly or disagrees with the method of adjustment, the method of adjustment shall be determined by the PROFESSIONAL on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, and shall include a reasonable allowance for overhead and profit. In such case, CONTRACTOR shall keep and present to the PROFESSIONAL an itemized accounting together with appropriate supporting data. Unless otherwise specified herein, costs shall be limited to:
- (i) costs of labor, including social security, unemployment insurance, fringe

benefits required by agreement or custom, and worker's compensation insurance directly attributable to the change;

- (ii) costs of materials, supplies and equipment, including the cost of transportation, whether incorporated or consumed directly attributable to the change;
- (iii) rental costs of machinery and equipment, exclusive of hand tools, whether rented from CONTRACTOR or others directly attributable to the change;
- (iv) costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work directly attributable to the change; and
- (v) additional costs of supervision and field office personnel directly attributable to the change.

8.7.7 The amount of credit to be allowed by CONTRACTOR to the TOWN for a deletion or change which results in a net decrease in the contract price shall be the actual net cost as confirmed by the PROFESSIONAL architect. When there are both increases and decreases in the Work, the allowance for overhead and profit shall be figured on the basis of net increase, if any, of the change.

8.7.8 Pending final determination of the total cost of the Change Directive, amounts not in dispute shall be included in future invoices for payment, accompanied by the Change Order. For costs in dispute, the PROFESSIONAL architect shall make an interim determination for purposes of monthly certification for payment for those costs. Either party may then submit a claim according to other provisions contained herein.

8.8 **Necessity for Signed Writing.** No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the TOWN, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. CONTRACTOR understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

ARTICLE 9 TOWN'S PROFESSIONAL(S) AND CONSTRUCTION ADMINISTRATION

9.1 **TOWN'S Designated Professional Representative.** Unless otherwise directed by TOWN, one designated PROFESSIONAL shall act as TOWN'S design representative from the effective date of this Contract until one (1) year from the date of achievement of Substantial Completion.

9.1.1 The PROFESSIONAL so designated will be TOWN'S design representative during

performance of the Work and will consult with and advise TOWN on all design and technical matters.

9.1.2 The designated PROFESSIONAL will act as initial non-binding interpreter of the requirements of this Contract and as TOWN'S advisor on claims.

9.2 **Professional Site Visits.** The PROFESSIONAL(s) will visit the Site with sufficient frequency for familiarization with the progress and quality of the Work and to inspect the Work to determine compliance of the Work with (i) this Contract, including approved shop drawings and other submittals; (ii) the Construction Schedule; and (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi- public authorities and agencies having or asserting jurisdiction over the Project.

9.3 **Professional Rejection of Work.** The PROFESSIONAL(s) may disapprove or reject Work which does not comply with (i) this Contract including approved shop drawings and other submittals; or (ii) applicable laws, statutes, building codes, rules or regulations of any governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

9.4 **Professional Evaluations.**

9.4.1 The PROFESSIONAL(s) will review and evaluate the results of all inspections, tests and written reports required by this Contract and by any governmental entity having or asserting jurisdiction over the Project. The PROFESSIONAL(s) will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the PROFESSIONAL(s). The PROFESSIONAL(s) will promptly reject Work which does not conform to or comply with the testing requirements contained herein.

9.4.2 The PROFESSIONAL(s) may require inspection or testing of any Work in addition to that required by this Contract or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The PROFESSIONAL(s) will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the PROFESSIONAL(s).

9.5 **Professional Submittal Activities.** The PROFESSIONAL(s) will review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions within not more than fourteen (14) calendar days, and will not approve any submittals unless such submittals conform with (i) the Project design concept; (ii) this Contract; and (iii) Contract Price. PROFESSIONAL'S review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the

Construction Documents. CONTRACTOR remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques or assembly, and for performance of the Work.

- 9.6 **Professional Interpretations.** A PROFESSIONAL will, when requested to do so in writing by CONTRACTOR, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. PROFESSIONAL'S interpretations and decisions relating to artistic effect shall be final if not inconsistent with this Contract.
- 9.7 **Professional Change Order Activities.** The PROFESSIONAL(s) will consult with and advise TOWN concerning, and will administer and manage, all change order requests and change orders on behalf of TOWN.
- 9.8 **Professional Pay Application Activities.** The PROFESSIONAL will review applications for payment, including such accompanying data, information and schedules as the PROFESSIONAL requires, to determine the amounts due to CONTRACTOR and shall authorize payment by TOWN to CONTRACTOR in writing. After the Work is determined to be finally complete and the PROFESSIONAL determines that CONTRACTOR has completed the Work, the PROFESSIONAL will determine whether CONTRACTOR is entitled to final payment, and if so will certify such to the TOWN in writing.
- 9.9 **Professional Relationship to Contractor.** The duties, obligations and responsibilities of CONTRACTOR under this Contract shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of any PROFESSIONAL. CONTRACTOR shall not be a third-party beneficiary of any agreement by and between TOWN and any PROFESSIONAL. The duties of CONTRACTOR to TOWN shall be independent of, and shall not be diminished by, any duties or obligations of any PROFESSIONAL to TOWN.

ARTICLE 10 CONTRACTOR'S INSPECTION AND CORRECTION OF DEFECTIVE OR INCOMPLETE WORK

- 10.1 **Rejection and Correction of Work in Progress.** During the course of the Project, CONTRACTOR shall inspect and promptly, whether at the direction of PROFESSIONAL, TOWN, or CONTRACTOR itself, reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- 10.1.1 CONTRACTOR shall promptly correct or require the correction of all such rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed.
- 10.1.1.1 CONTRACTOR shall bear all costs of correcting Work, including additional testing and inspections and compensation for all services and expenses necessitated by such corrections for Work that does

not conform to the Construction Documents.

10.1.1.2 CONTRACTOR shall be compensated for all costs of correcting Work, including additional testing and inspections and compensation for all services and expenses, including but not limited to general conditions for extended time, necessitated by such correction for Work installed per the Construction Documents that is later determined by others to not comply with any applicable law, statute, building code, rule or regulation of any governmental, public or quasi-public authority or agency having jurisdiction over the project. CONTRACTOR is not responsible for conformance of the Construction Documents with any applicable laws, codes, statutes, rules or regulations.

10.12 CONTRACTOR shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of TOWN or other trade contractors or subcontractors caused by CONTRACTOR'S correction or removal of rejected Work, due to lack of conformance to the Construction Documents. If CONTRACTOR fails to correct any destroyed or damaged work, TOWN may take such steps as are necessary to repair or replace the destroyed or damaged work and deduct the cost thereof from this contract.

10.2 **Covered or Concealed Work.** If a portion of the Work has been covered, CONTRACTOR shall, if notified to do so by TOWN or PROFESSIONAL, uncover the designated portion for observation and then replace it.

1021 If the designated portion of the Work was covered contrary to the request of TOWN or PROFESSIONAL, or to requirements specifically expressed in the Construction Documents, CONTRACTOR shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.

1022 If the designated portion of the Work was covered prior to a specific request by TOWN or PROFESSIONAL that it remain uncovered, CONTRACTOR shall receive additional compensation for the costs of uncovering and replacement and modification of the construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.

10.3 **Acceptance of Non-conforming Work.** If TOWN prefers to accept Work which is not in accordance with the requirements of the Contract Documents, TOWN may do so instead of requiring its removal and correction, in which case the Construction Price shall be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 11

TOWN'S RIGHT TO STOP WORK OR RIGHT TO CARRY OUT WORK

11.1 If CONTRACTOR fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with this Contract, TOWN may,

by written notice, order the CONTRACTOR to cease and desist in performing the Work or any portion of the Work until the cause of the order has been eliminated to the satisfaction of the TOWN. Upon receipt of such instruction, CONTRACTOR shall immediately cease and desist as instructed by TOWN and shall not proceed further until the cause of the TOWN'S order has been corrected, no longer exists, or the TOWN instructs that the Work may resume.

11.1.1 CONTRACTOR shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause if such stoppages are determined to be the fault of the CONTRACTOR.

11.1.2 If CONTRACTOR fails or refuses within seven (7) calendar days to provide adequate assurance to TOWN that the cause of such instructions will be eliminated or corrected, then the TOWN shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another general contractor, and CONTRACTOR shall be responsible for any additional costs incurred by TOWN in performing such Work.

11.1.3 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the TOWN may have against CONTRACTOR.

11.2 If CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents and fails to commence and continue correction of such default or neglect within seven (7) calendar days after receipt of the written notice from TOWN to do so with diligence and promptness, TOWN may after such seven-day period give CONTRACTOR a second written notice to correct such deficiencies. The second written notice shall require CONTRACTOR to correct such default or neglect within three (3) business days of receipt of the written notice. If CONTRACTOR fails to correct such deficiencies TOWN may, without prejudice to other remedies available to TOWN, correct the deficiencies and issue a Change Order deducting from the Contract Price the reasonable cost of correcting such deficiencies including TOWN'S expenses and compensation for PROFESSIONAL'S additional services made necessary by the default, neglect or failure. Such action by TOWN and amounts charged to CONTRACTOR are both subject to prior approval of PROFESSIONAL. If payment then or thereafter due the CONTRACTOR are not sufficient to cover such amounts, CONTRACTOR shall pay the difference to TOWN.

ARTICLE 12 INSPECTION, CORRECTION OF WORK, AND PROJECT CLOSE OUT

12.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Substantial Completion inspection and the required Substantial Completion documentation and items have been produced.

12.1.1 When CONTRACTOR believes that the Work is substantially complete, it shall notify TOWN and the appropriate PROFESSIONAL that its Work is ready for a Substantial Completion inspection.

- 12.12 At or prior to the Substantial Completion inspection, CONTRACTOR will prepare and furnish to PROFESSIONAL a Declaration of Substantial Completion, which at a minimum must:
- (i) contain a blank for entry of the date of Substantial Completion, which date will fix the commencement date of warranties and guaranties and allocate between TOWN and CONTRACTOR responsibility for security, utilities, damage to the Work, and insurance;
 - (ii) include a list of items to be completed or corrected and state the time within which the listed items will be completed or corrected; and
 - (iii) contain signature lines for TOWN, CONTRACTOR and PROFESSIONAL.
- 12.13 Upon receipt of notification from CONTRACTOR the appropriate PROFESSIONAL will coordinate with TOWN and CONTRACTOR a date for inspection of the Work to determine whether the Work is substantially complete.
- 12.14 At inspection(s) to determine whether the Work is substantially complete, the PROFESSIONAL will:
- (i) inspect the Work;
 - (ii) list additional items to be completed or corrected; and
 - (iii) determine, in consultation with TOWN, whether Substantial Completion of the Work has occurred.
- 12.15 If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to TOWN until the Work is determined to be substantially complete.
- 12.16 On or prior to the required date of Substantial Completion, CONTRACTOR shall deliver to the appropriate PROFESSIONAL keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for TOWN'S occupancy and use of the Work for its intended purpose. The PROFESSIONAL will obtain and review Substantial Completion documentation and items, and will inform CONTRACTOR of any deficiencies.
- 12.17 When TOWN, CONTRACTOR and the appropriate PROFESSIONAL agree that the Work has passed the Substantial Completion inspection and CONTRACTOR has produced the required Substantial Completion documentation and items, they shall each sign the Declaration of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion.

The Declaration of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction. Failure of CONTRACTOR to include an item on the list does not alter the responsibility of CONTRACTOR to complete all Work in accordance with this Contract.

- 12.18 CONTRACTOR shall promptly correct the Work properly rejected by the PROFESSIONAL for failing to conform to the requirements of this Contract, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting the rejected Work shall be at CONTRACTOR'S expense.
- 12.19 Substantial Completion must be accompanied by a Certificate of Occupancy, unless the Certificate of Occupancy is unattainable outside of CONTRACTOR'S control.
- 12.2 **Final Completion.** Final Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Final Completion inspection and that CONTRACTOR has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due CONTRACTOR until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to TOWN by CONTRACTOR.
- 12.21 When CONTRACTOR believes the Work is finally complete, CONTRACTOR shall notify TOWN and the appropriate PROFESSIONAL that the Work is ready for Final Completion inspection.
- 12.22 Upon receipt of such notification from CONTRACTOR, the PROFESSIONAL will coordinate with TOWN and CONTRACTOR a date for inspection of the Work to determine whether the Work is finally complete.
- 12.23 At the Final Completion inspection to determine whether the Work is finally complete, the PROFESSIONAL will:
- (i) inspect the Work;
 - (ii) determine whether all items on the list, included with the Declaration of Substantial Completion have been satisfactorily completed and corrected;
 - (iii) determine whether the Work complies with (a) this Contract; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards.
 - (iv) determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and
 - (v) determine, in consultation with TOWN, whether the Work is finally complete.

- 1224 If the Work is not finally complete, CONTRACTOR shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to TOWN, until the Work is finally complete.
- 1225 On or prior to the date of Final Completion, CONTRACTOR shall deliver to the appropriate PROFESSIONAL the following Final Completion close-out documentation and items:
- (i) all operating and instruction manuals not previously produced during commissioning and required maintenance stocks;
 - (ii) two (2) sets of as-built drawings and markups;
 - (iii) certification and affidavit that all insurance required of CONTRACTOR beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to TOWN;
 - (iv) written consent of the surety(ies), if any, to final payment;
 - (v) full, final and unconditional waivers of construction liens, and release of security interests or encumbrances on the Project property from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim against TOWN or TOWN'S property;
 - (vi) full, final and unconditional certification and affidavit that all of CONTRACTOR'S obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;
 - (vii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;
 - (viii) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
 - (ix) a list of any item(s) due but unable to be delivered and the reason for non-delivery;
 - (x) spare parts and attic stock, if any; and
 - (xi) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.
- 1226 The appropriate PROFESSIONAL will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion

which are submitted by CONTRACTOR, and will immediately inform CONTRACTOR about any deficiencies and omissions.

ARTICLE 13 LICENSES, APPROVALS AND PERMITS

- 13.1 CONTRACTOR shall obtain all licenses, permits or approvals required for the Work at CONTRACTOR'S expense as part of the Contract Price.

ARTICLE 14 GOODS, PRODUCTS AND MATERIALS

- 14.1 **Quality of Materials.** CONTRACTOR shall furnish goods, products, materials, equipment and systems which:
- (i) comply with this Contract;
 - (ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;
 - (iii) are new (unless otherwise specified or permitted) and without apparent damage;
 - (iv) are of the quality, strength, durability, capacity or appearance required by the Construction Documents;
 - (v) are merchantable;
 - (vi) are free from defects; and
 - (vii) are in accordance with manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.
- 14.2 **Installation and Use of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case CONTRACTOR shall so inform TOWN and PROFESSIONAL and shall proceed as directed in writing by PROFESSIONAL, unless otherwise directed in writing by TOWN. CONTRACTOR shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.
- 14.3 **Unsuitable Materials.** CONTRACTOR shall inform TOWN of goods, products,

materials, equipment or systems which Contractor knows are unsuitable or unavailable. Approval by TOWN and PROFESSIONAL of substitute goods, products, materials, equipment or systems does not mean or imply final acceptance by TOWN and PROFESSIONAL if such items should be defective or not as previously represented.

- 14.4 **Brand Name or Alternate.** Notwithstanding the foregoing, if a product or service has been identified in the specifications by brand name, such identification is intended to be descriptive and not restrictive. However, if CONTRACTOR proposes to furnish an alternate product or service after this Contract has been fully executed, CONTRACTOR shall receive the written authorization from the PROFESSIONAL and TOWN prior to incorporating such alternate product or service into the Work. An alternative to the product/material specified will only be considered if the product/material is not readily available to meet the construction schedule. Also, such alternate will require cost comparison evidence and if found to be less expensive than the specified material, TOWN will be entitled to a credit for the cost difference. For purposes of this paragraph, an alternative shall be defined as a product or material differing substantially in quality and characteristics from the product or material set forth in the Contract Documents. If the Contract Documents specify an “or equal” product or material, an equal is defined as a product or material with the same quality or characteristics as that specified, but differing in brand name.
- 14.5 **Defective Materials.** If during or prior to construction operations TOWN or PROFESSIONAL rejects any portion of the Work on the grounds that the Work or materials are defective, the TOWN or PROFESSIONAL shall give the CONTRACTOR written notice of the defect. CONTRACTOR shall then have seven (7) calendar days from the date the notice is received to correct the defective condition.
- 14.6 **Security for the Project.** CONTRACTOR shall provide security for the Project, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work, whether store on or off site by Contractor, its subcontractors, materialmen or others under its supervision.
- 14.7 **Material Safety Data Sheets.** If any chemicals or materials or products containing toxic substances are to be used at any time during this contract, CONTRACTOR shall keep copies of all material safety data sheets on file with the contract documents located in the field office.
- 14.8 **Payment for Materials.** Unless otherwise provided in this Contract, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by CONTRACTOR with procedures satisfactory to TOWN to establish TOWN’S title to such materials and equipment or otherwise protect TOWN’S interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Nothing precludes TOWN from paying for materials directly in order to recognize a savings of sales tax.

ARTICLE 15
PERFORMANCE BOND AND PAYMENT BOND

15.1 Bond Requirements.

15.1.1 CONTRACTOR shall be required to provide payment and performance bonds prior to commencing the Work. The amount of the premiums for such bonds shall be included in the Construction Price. Performance and Payment Bonds shall be 100% of the contract amount and shall be executed on forms as mutually agreed upon between TOWN and CONTRACTOR. All original Performance and Payment Bonds will be submitted to TOWN for recording in the public records of Lake County, Florida, at the cost of CONTRACTOR. The bonds will be acceptable to TOWN only if the following conditions are satisfied:

- (i) The Surety is licensed to do business in the State of Florida;
- (ii) The Surety holds a Certificate of Authority authorizing it to write surety bonds in this State;
- (iii) The Surety has twice the minimum surplus and capital requirements required by the Florida Insurance Code at the time the contract is issued;
- (iv) The Surety has a current rating of A or A- as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc., if the contract price exceeds \$500,000, pursuant to Section 287.0935, Florida Statutes;
- (v) The Surety is otherwise in compliance with the Florida Insurance Code; and
- (vi) The Surety holds a currently valid Certificate of Authority issued by the United States Department of Treasury under 31 U.S.C. ss9304.

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

15.1.2 The CONTRACTOR shall not be required to provide a maintenance bond.

ARTICLE 16
INSURANCE

16.1 CONTRACTOR shall obtain and maintain, at CONTRACTOR'S expense, from a company or companies authorized to do business in the State of Florida and which are acceptable to TOWN, insurance containing the following selected types of coverage and

minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract by the CONTRACTOR or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable. CONTRACTOR shall provide TOWN proof of insurance prior to Work commencing. CONTRACTOR shall assure that its sub-contractors provide the same types of coverage and minimum limits of liability as required of CONTRACTOR and it is in effect at all times during this Contract.

- (i) General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/2,000,000
Products-Completed Operations	\$2,000,000
Personal & Adv. Injury	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$10,000
Contractual Liability	Included
Umbrella Liability	\$10,000,000 each occurrence/aggregate

- (ii) Automobile liability insurance, including owned, non-owned, and hire autos with the following minimum limits and coverage:

Combined Single Limit	\$1,000,000
-----------------------	-------------

- (iii) Worker's compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc.). If not required by law to maintain workers compensation insurance, the vendor must provide a notarized statement that if he or she is injured, he or she will not hold the TOWN responsible for any payment or compensation.

- (iv) Employers Liability with the following minimum limits and coverage:

Each Accident	\$1,000,000
Disease-Each Employer	\$1,000,000
Disease-Policy Limit	\$1,000,000

- (v) Builders Risk Insurance with all-risk perils for 100% of the contract amount.
- (vi) Town of Montverde, a Florida municipality, shall be named as additional insured as their interest may appear on all applicable policies.
- (vii) Certificate(s) of Insurance shall provide for a minimum of thirty (30) days prior written notice to TOWN of any change, cancellation, or nonrenewal of the required insurance.

- (viii) Certificate(s) of Insurance shall identify the contract number in the Description of Operations section of the Certificate.
- (ix) Certificate of Insurance shall evidence a waiver of subrogation in favor of TOWN, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium by the TOWN.
- (x) Certificate holder shall be TOWN OF MONTVERDE.
- (xi) All self- insured retentions shall appear on the certificate(s) and shall be subject to the approval of TOWN. At the option of the TOWN, the insurer shall reduce or eliminate such self-insured retentions; or the vendor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.
- (xii) The TOWN shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the vendor and/or subcontractor providing such insurance.
- (xiii) CONTRACTOR shall be responsible for subcontractors and their Insurance. Subcontractors are to provide Certificates of Insurance to TOWN evidencing coverage and terms in accordance with the CONTRACTOR'S requirements.

- (xiv) Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.

Neither approval by the TOWN of any insurance supplied by CONTRACTOR or any subcontractor, nor a failure to disapprove that insurance, shall relieve the CONTRACTOR of full responsibility of liability, damages, and accidents as set forth herein.

- (xvi) If it is not possible for the CONTRACTOR to certify compliance, on the certificate of insurance, with all of the above requirements, then the CONTRACTOR is required to provide a copy of the actual policy endorsement(s) providing the required coverage and notification provisions.

ARTICLE 17 CONTRACTOR'S WARRANTIES AND GUARANTEES

- 17.1 **Two-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Contract, CONTRACTOR, upon request by TOWN or PROFESSIONAL, shall promptly correct all failures or defects in the Work for a period of two (2) years after the actual date of Substantial Completion, or the date of acceptance by TOWN, whichever is later.

17.1.1 CONTRACTOR shall schedule, coordinate and participate in a walk-through inspection of the Work one (1) month prior to the expiration of the two-year correction period, and shall notify TOWN and PROFESSIONAL, and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

17.1.2 CONTRACTOR shall be responsible for promptly correcting any deficiencies, at no cost to TOWN, within five (5) calendar days after TOWN notifies CONTRACTOR of such deficiency in writing.

17.1.3 Should CONTRACTOR fail to promptly correct any failure or defect, TOWN may take whatever actions it deems necessary to remedy the failure or defect and the CONTRACTOR shall promptly reimburse TOWN for any expenses or damages it incurs as a result of the CONTRACTOR'S failure to correct the failure or defect.

17.1.4 INTENTIONALLY DELETED.

- 17.2 **Express Warranties and Guarantees – Contractor.** In addition to the warranties and guarantees set forth elsewhere herein, CONTRACTOR shall expressly warrant and guarantee to TOWN:

- (i) that the Work complies with the Construction Documents;

- (ii) that all goods, products materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of the quality required by the Construction Documents and (c) merchantable; and
- (iii) that all management, supervision, labor and services required for the Work shall comply with this Contract and shall be and are performed in a workmanlike manner.
- (iv) All work shall be guaranteed for two (2) years after completion and acceptance unless otherwise specified. The guarantees are to be construed as being supplemental in nature and in addition to any and all other remedies available to TOWN under the laws of the State of Florida.

17.3 **Express Warranties and Guarantees – Subcontractors and Suppliers.** CONTRACTOR shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to TOWN and CONTRACTOR in a form identical to the warranties, guarantees and other undertakings set forth in this Contract, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of TOWN as well as CONTRACTOR.

17.4 **Non-Exclusivity and Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other statutory warranties, if any, and shall survive the TOWN'S payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.

17.5 **Non-Limitation.** Nothing contained in Paragraph 17.1 shall be construed to establish a period of limitation with respect to CONTRACTOR'S obligations under this Contract. Paragraph 17.1 relates only to CONTRACTOR'S specific obligations with respect to the Work, and has no relationship to the time within which CONTRACTOR'S contractual obligations under this Contract may be enforced, nor to the time within which proceedings may be commenced to establish CONTRACTOR'S liability with respect to any contractual obligations pursuant to Paragraph 17.1 or contained elsewhere herein.

17.6 **Commencement of Obligations.** Unless otherwise specified, all of CONTRACTOR'S warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents shall begin on the actual date of Substantial Completion.

ARTICLE 18 TERMINATION OR SUSPENSION OF CONTRACT

18.1 **Termination by TOWN for Cause.**

18.1.1 TOWN may terminate this Contract for cause if CONTRACTOR materially breaches this Contract by:

- a. Refusing, failing or being unable to properly manage or perform the Work;
- b. Refusing, failing or being unable to supply sufficient numbers of properly skilled workers or property materials, or maintain applicable schedules;
- c. Refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
- d. Disregarding applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of a public authority or quasi-public authority having jurisdiction; or
- e. Refusing, failing or being unable to substantially perform in accordance with the terms of any provision of the Contract Documents.

18.1.2 Upon the occurrence of any of the events described in 18.1.1 above, TOWN may give written notice to CONTRACTOR setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. TOWN may after such seven calendar day period give CONTRACTOR a second written notice to correct such deficiencies. The second written notice shall require CONTRACTOR to correct such default or neglect within three (3) business days of receipt of the written notice. At any time thereafter, if the CONTRACTOR fails to initiate the cure or if the CONTRACTOR fails to expeditiously continue such until complete, the TOWN may give written notice to the CONTRACTOR of immediate termination, and TOWN without prejudice to any other rights or remedies, may take any or all of the following actions:

- a. complete all or any part of the Work, including supplying workers, material and equipment which TOWN deems expedient to complete the Work;
- b. contract with others to complete all or any part of the work, including supplying workers, material and equipment which TOWN deems expedient to complete the Work;
- c. take such other action as is necessary to correct such failure;
- d. take possession of all materials, tools, construction equipment, and machinery on the site owned by CONTRACTOR, or leased by CONTRACTOR and paid for by TOWN;
- e. directly pay the CONTRACTOR'S subcontractors and suppliers compensation due to them from CONTRACTOR;
- f. finish the Work by whatever method TOWN may deem expedient; and
- g. require CONTRACTOR to assign CONTRACTOR'S right, title and interest in any or all of CONTRACTOR'S subcontracts or orders to TOWN.

18.1.3 If TOWN terminates this Contract for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth below in paragraph 18.3.

18.2 **Termination Due to Unavailability of Funds.** When funds are not appropriated or otherwise made available to support continuation of performance under this Contract, the Contract shall be cancelled and the CONTRACTOR shall be reimbursed for all Work

performed by CONTRACTOR, plus five percent (5%) overhead and profit thereon.

- 18.3 **Termination or Suspension for Convenience.** TOWN may at any time give written notice to CONTRACTOR terminating this Contract or suspending the Project, in whole or in part, for the TOWN'S convenience and without cause. If TOWN suspends the Project for convenience, CONTRACTOR shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.
- 18.4 **Contractor's Compensation When Terminated for Convenience.** If this Contract is (i) terminated by TOWN pursuant to 18.3; or (ii) suspended more than one (1) month by TOWN pursuant to 18.3, TOWN shall pay CONTRACTOR for all Work actually performed prior to the effective termination date, plus five percent (5%) overhead and profit thereon, and reasonable costs associated with termination, including but not limited to demobilization expenses. TOWN may further agree to additional compensation, if any, to CONTRACTOR.
- 18.5 **Contractor's Compensation when terminated for cause.** If this Contract is terminated by TOWN for cause, no further payment shall be made to CONTRACTOR until Final Completion of the Project. At such time, CONTRACTOR shall be paid the remainder of the Construction Price less all reasonable costs and damages incurred by TOWN as a result of the default of CONTRACTOR. CONTRACTOR shall additionally reimburse TOWN for any additional costs or expenses incurred.
- 18.6 Irrespective of the reason for termination or the party terminating, the total sum paid to the CONTRACTOR shall not exceed the Contract Price, as same may be adjusted pursuant to this Contract, reduced by the amount of payments previously made or deductions incurred pursuant to any other provision of this Contract, and shall in no event include duplication of payment.
- 18.7 Irrespective of the reason for termination or the party terminating, if this Contract is terminated, the CONTRACTOR shall, unless otherwise notified by TOWN,
- (i) immediately stop work;
 - (ii) terminate outstanding orders and subcontracts;
 - (iii) settle the liabilities and claims arising out of the termination of subcontractors and orders with amounts paid by TOWN; and
 - (iv) transfer title and deliver to TOWN such completed or partially completed Work, and, if paid for by TOWN, materials, equipment, parts, fixtures, information and such contract rights as the CONTRACTOR has.
- 18.8 The right to terminate or suspend the Work shall not give rise to a duty on the part of either TOWN or CONTRACTOR to exercise that right for the benefit of TOWN, CONTRACTOR or any other persons or entities.

- 18.9 If CONTRACTOR fails to file a claim within one (1) year from the effective date of termination, TOWN shall pay CONTRACTOR only for services actually performed and expenses actually incurred prior to the effective termination date.

ARTICLE 19 DISPUTE RESOLUTION

- 19.1 In the case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Contract or the breach thereof, the parties shall first attempt resolution through mutual discussion.
- 19.2 If the parties cannot resolve any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Contract or the breach thereof through mutual discussion, as a condition precedent to any litigation, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable resolution satisfactory to all parties.
- 19.3 TOWN and CONTRACTOR agree that pending the resolution of any dispute, controversy, or question, the TOWN and CONTRACTOR shall each continue to perform their respective obligations without interruption or delay, CONTRACTOR shall not stop or delay the performance of the Work, and TOWN shall make all undisputed payments, unless the amount in dispute, controversy or question will exceed the amount of undisputed payments.

ARTICLE 20 DAMAGES AND REMEDIES

- 20.1 CONTRACTOR shall, at its expense, promptly correct, repair or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Contract, or any other applicable statutory warranty or guarantee.
- 20.2 CONTRACTOR shall promptly reimburse TOWN for any reasonable, documented, and directly incurred out-of-pocket expenses or damages incurred by TOWN as a result of (i) CONTRACTOR'S failure to substantially perform in accordance with the terms of this Contract; (ii) deficiencies or conflicts in the Construction Documents attributable to CONTRACTOR or of which CONTRACTOR was or should have been aware; (iii) CONTRACTOR'S breach of the warranties and guarantees set forth in this Contract or any other applicable warranty or guarantee; or (iv) other acts or omissions of CONTRACTOR.
- 20.3 To the fullest extent permitted by law CONTRACTOR shall secure, defend, protect, hold harmless, and indemnify TOWN, and its employees, agents, officers and council members (related parties) for damages to persons or property caused in whole or in part by any act,

omission, or default of CONTRACTOR, its officers, directors, agents, or employees, arising from this Contract or its performance, or damages to persons or property caused in whole or part by any act, omission, or default of CONTRACTOR'S contractors, subcontractors, sub-subcontractors, materialmen, or agents or their respective employees. TOWN Such indemnification shall include claims or, damages resulting from statutory violation or punitive damages caused by or resulting from the acts or omissions of CONTRACTOR or any of CONTRACTOR'S contractors, subcontractors, sub-subcontractors, materialmen, or agents or their respective employees. Further, CONTRACTOR shall indemnify and hold harmless TOWN, its employees, council members, and officers, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of CONTRACTOR, its employees, or persons utilized in performance of this Contract.

- 20.4 TOWN'S selection of one or more remedies for breach of this Contract contained herein shall not limit the TOWN'S right to invoke any other remedy available to the TOWN under this Contract or by law.
- 20.5 CONTRACTOR shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead, or any indirect consequential damages.
- 20.6 Interest shall be calculated in accordance with Part VII, Chapter 218, Florida Statutes.

**ARTICLE 21
CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between CONTRACTOR and TOWN concerning the Work are attached to this Contract, made a part hereof and consist of the following:

- 21.1 This Contract (pages 1 to , inclusive), and all attached documents, appendices and addenda.
- 21.2 All drawings and specifications as set forth in the Invitation to Bid for the Project shall be incorporated herein and made a part of this Contract and are attached hereto as Appendix A.
- 21.3 Certificates of Insurance of CONTRACTOR
- 21.4 Invitation to Bid documents including Addenda
- 21.5 Drawings prepared by GatorSkitch, dated _____, and any revisions thereto, if any, (_____) dated (_____), as well as Drawings prepared by (_____) dated (_____) and any revisions thereto, if any, dated (_____).

- 21.6 The following which may be delivered or issued on or after the Effective Date of this Contract and are not attached hereto:
- a. Notice to Proceed.
 - b. Construction Change Directives.
 - c. Approved Change Orders
 - d. Performance Bond
 - e. Payment Bond
 - f. Proof of proper license
 - g. Permit(s) if any
- 21.7 The Contract Documents may only be amended, modified or supplemented by an amendment to this Contract signed by the parties.
- 21.8 Documents not included or expressly contemplated in this Article do not, and shall not, form any part of this Contract.
- 21.9 TOWN shall furnish CONTRACTOR with a copy of the Construction Documents, along with copies of the plans and specifications.
- 21.10 Conflicts. In the event of any conflict, discrepancy, or inconsistency among any of the Construction Documents, the following shall control:
- a. As between figures given on plans and scaled measurements, the figures shall govern;
 - b. As between large-scale plans and small-scale plans, the large-scale plans shall govern;
 - c. As between plans and specifications, the requirements of the specifications shall govern;
 - d. Provided, however, that among the plans and specifications provided by TOWN, the more stringent requirement, as determined by TOWN, shall take precedence over less stringent requirements regardless of which document the more stringent requirement resides.

ARTICLE 22 SPECIAL TERMS AND CONDITIONS

- 22.1 INTENTIONALLY DELETED.
- 22.2 **Independent CONTRACTOR.** CONTRACTOR agrees that it shall be acting as an independent contractor and shall not be considered or deemed to be an agent, employee, joint 36venture, or partner of TOWN. CONTRACTOR shall have no authority to contract for or bind TOWN in any manner and shall not represent itself as an agent of TOWN or as otherwise authorized to act for or on behalf of TOWN. Additionally, CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona

bona fide employee working solely for CONTRACTOR to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

22.3 **Public Entity Crimes.** A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a contractor, supplier, or subcontractor under a contract with any public entity in excess of the threshold amount provided in Florida Statutes, section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

22.4 **Prohibition against Contingent Fees.** CONTRACTOR warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract and that they have not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Contract.

22.5 **Public Records.**

A. All electronic files, audio and/or video recordings, and all papers pertaining to any activity performed by the provider for or on behalf of the TOWN shall be the property of the TOWN and will be turned over to the TOWN upon request. In accordance with Florida "Public Records" law, Chapter 119, Florida Statutes, each file and all papers pertaining to any activities performed for or on behalf of the TOWN are public records available for inspection by any person even if the file or paper resides in the CONTRACTOR'S office or facility.

B. IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 407-469-2681, townclerk@mymontverde.com 17404 Sixth Street, Montverde, FL 34756.

22.6 INTENTIONALLY DELETED.

ARTICLE 23 GENERAL CONDITIONS

23.1 This Contract is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Contract shall lie in Lake County, Florida, and jurisdiction shall be in the Circuit Court of Lake County, Florida. The parties waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.

- 232 Neither Party may assign any rights or obligations under this Contract to any other party unless specific written permission from the other party hereto is obtained.
- 233 The captions utilized in this Contract are for the purposes of identification only and do not control or affect the meaning or construction of any of the provisions hereof.
- 234 This Contract shall be binding upon and shall inure to the benefit of each of the parties and of their respective successors and permitted assigns. Nothing in this Contract is intended to or shall create a contractual relationship with, or any rights of cause of action in favor of, any third party against either TOWN or CONTRACTOR.
- 235 This Contract may not be amended, released, discharged, rescinded or abandoned, except by a written instrument duly executed by each of the parties hereto.
- 236 The failure of any party hereto at any time to enforce any of the provisions of this Contract will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Contract.
- 237 During the term of this Contract CONTRACTOR assures TOWN that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that CONTRACTOR does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discrimination in any form or manner against CONTRACTOR employees or applicants for employment. CONTRACTOR understands and agrees that this Contract is conditioned upon the veracity of this statement of assurance.
- 238 CONTRACTOR shall at all times comply with all Federal, State and local laws, rules and regulations.
- 239 The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof provided the intent of this Contract remains and this Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 23.10 Unless otherwise provided, all notices shall be in writing and considered duly given if the original is (i) hand delivered; (ii) delivered by facsimile; or (iii) sent by U.S. Mail, UPS or FedEx, postage prepaid. All notices shall be given to the addresses set forth above. Notices hand delivered or delivered by facsimile shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

(Signature pages to follow)

IN WITNESS WHEREOF, the parties hereto have signed this Contract.

CONTRACTOR: _____,

ATTEST:

BY: _____
(Signature)

WITNESSES:

NAME: _____
(Print)

TITLE: _____

DATE: _____

TOWN:

TOWN OF MONTVERDE, FLORIDA

Paul Larino, Town Manager

DATE: _____

ATTEST:

Sandy Johnson, Town Manager

**APPENDIX A SUB
CONTRACTOR'S PERSONNEL CHART**

SUBCONTRACTOR: _____.

Project Manager: _____.

QA/QC: _____.

Project Superintendent: _____.

APPENDIX B
COMPENSATION SCHEDULE - SCHEDULE OF VALUES

APPENDIX C
SUBCONTRACTOR'S SUB-CONTRACTORS, IF ANY,
AND SUPPLIERS CHART

Sub-contractors:

Suppliers:

APPENDIX D
SCOPE OF WORK AND PLANS AND SPECIFICATIONS