

ATTACHED EXHIBITS:

1. BID TABULATION SHEET
2. COPY OF CONTRACT NO. (09)C-38-H
3. RESOLUTION NO. _____

SUMMARY EXPLANATION/BACKGROUND INFORMATION/JUSTIFICATION:

The City requires restoration and renovation improvements to the existing 18-hole golf course at the Springtree Golf Club. Bid No. 09(26)10-04-08-20-H, Springtree Golf Club Renovation, was opened on August 26, 2009, and six (6) bid responses were received. Staff recommends that a contract be awarded for the Base Bid and Alternate No. 1 (Vehicular Bridges) to the low responsive and responsible bidder, QGS Development, Inc. of Lithia, Florida. Wadsworth Golf Construction Company of Oldsmar, Florida has been deemed non-responsive because they do not have a General Contractor's license.

DEPARTMENT HEAD RECOMMENDATION:

APPROVAL

PERSON WITH ADDITIONAL INFORMATION:

NAME: HOLLY RAPHAELSON, PURCHASING SPECIALIST PHONE: 954-572-2202

DEPARTMENT HEAD SIGNATURE:



MARK LUBELSKI, P.E.
DIRECTOR OF PLANNING AND DEVELOPMENT

CITY MANAGER RECOMMENDATIONS:

APPROVED FOR AGENDA PLACEMENT.

SIGNATURE:  _____ (CITY MANAGER)

SUNRISE, FLORIDA

RESOLUTION NO. 09-166

A RESOLUTION OF THE CITY OF SUNRISE, FLORIDA TO AWARD BID NO. 09(26)10-04-08-20-H AND A CONTRACT TO QGS DEVELOPMENT, INC., OF LITHIA, FLORIDA, FOR THE SPRINGTREE GOLF CLUB RENOVATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SUNRISE, FLORIDA:

Section 1. The Base Bid and Alternate 1 for the Springtree Golf Club Renovation, Bid No. 09(26)10-04-08-20-H, is hereby awarded to QGS Development, Inc., of Lithia, Florida in the amount of \$2,589,807.88, subject to budget amendment.

Section 2. The Purchasing Director is hereby authorized to execute all documents in connection with this award, including the contract for construction, upon review and approval by the City Attorney's office.

Section 3. The City Manager and the Director of Planning and Development are hereby authorized to approve change orders in accordance with the conditions specified in Resolution Nos. 92-222, 92-222-A and 92-222-98-A. All City permit fees, with the exception of re-inspection fees, are hereby waived.

Section 4. Effective Date. This Resolution shall be effective immediately upon its passage.

PASSED AND ADOPTED THIS 15TH DAY OF SEPTEMBER, 2009.

Mayor Roger B. Wishner

Authentication:

Felicia M. Bravo
City Clerk

MOTION: _____
SECOND: _____

ALU: _____
ROSEN: _____
SCUOTTO: _____
SOFIELD: _____
WISHNER _____

Approved by the City Attorney
as to Form and Legal Sufficiency. _____
Stuart R. Michelson

**CONTRACT NO. (09)C-38-H
BETWEEN THE CITY OF SUNRISE AND
QGS DEVELOPMENT, INC.**

THIS CONTRACT is made and entered into this _____ day of _____, 2009, by and between THE CITY OF SUNRISE, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA, whose address is 10770 West Oakland Park Boulevard, Sunrise, Florida 33351 (hereinafter referred to as "the City") and QGS DEVELOPMENT, INC. (hereinafter referred to as the "Contractor") for the SPRINGTREE GOLF CLUB RENOVATION hereinafter referred to as the "Project"), the City and the Contractor hereby agreeing as follows:

ARTICLE I

THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 The Contract

1.1.1 The Contract between the City and the Contractor, of which this Contract is a part, consists of the Contract Documents listed in Section 1.2 below. It shall be effective on the date this Contract is executed by the last party to execute it.

1.2 The Contract Documents

1.2.1 The Contract Documents consist of this Contract, the Specifications, the Drawings, the Addenda, the Bid Documents of Bid No. 09(26)10-04-08-20-H opened August 26, 2009, any Supplemental Conditions, all Change Orders and Field Orders issued hereinafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

N/A

Documents not enumerated in this Paragraph 1.2 or Paragraph 1.3 are not Contract Documents and do not form part of this Contract.

1.3 Entire Agreement

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between the City and the Contractor.

City Initials _____

Vendor Initials _____

1.4 No Privity with Others

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.

1.5 Intent and Interpretation

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings and the Product Data and shall give written notice to the City of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the City or the Architect of the Contract Documents, Shop Drawings or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The City has requested the Architect to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the

City Initials _____

Vendor Initials _____

execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been or are hereby made. The Contractor further acknowledges and represents that it has made a thorough and careful examination and inspection of existing conditions on the Project site, both surface and subsurface, and the Contractor expressly acknowledges and agrees that it shall make no claim for additional compensation due to existing site conditions including, but not limited to, rock, surface and subsurface water, existing structures, and deficient soil, provided said conditions could be determined or ascertained from a thorough and careful examination and inspection of the site.

1.5.8 In the event of any conflict in the Contract Documents, the following documents shall take precedence in the following order of precedence:

- (a) any Change Orders;
- (b) the Addenda;
- (c) the Specifications;
- (d) the Drawings;
- (e) any Supplemental Conditions;
- (f) the Contract for Construction;
- (g) the Bid Documents.

As between numbers and scaled measurements on the Drawings and in the Design, the numbers shall govern; as between larger scale and smaller scale drawings, the larger scale shall govern.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

1.5.10 Whenever the word "days" is used, it shall mean calendar days and not working days unless otherwise specified.

1.5.11 Contractor shall comply with Section 255.04, Florida Statutes, in selecting subcontractors, materials and suppliers.

1.6 Ownership of Contract Documents

1.6.1 The Contract Documents, and each of them, shall remain the property of the City unless the City has agreed otherwise with the Architect. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the City's prior written authorization.

ARTICLE II

THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

2.2 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, administration, management, supervision, testing, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:

This project involves restoration and renovation improvements to an existing 18-hole golf course.

The scope of work for this project shall consist of but not limited to:

- Tree Relocation, Clearing and Demolition
- Turf Elimination and Roto-Till
- Earthwork
- Rough Shaping
- Golf Course Drainage
- Green Construction
- Tee Construction
- Bunker Construction
- Irrigation System
- Cart Paths
- Timber Bridges
- Fine Shaping
- Grassing
- Landscaping
- Clean Up

2.3 Unless expressly permitted or allowed by the Contract Documents, substitutions of materials, articles, systems, equipment, or other components of the Work will not be considered. Where substitutions are expressly permitted or allowed by the Contract Documents, the Contractor must demonstrate to both the Architect and the City that a proposed substitution is equal in substance, quality and function to the material, article, or piece of equipment identified in the Contract Documents. The City shall have no obligation to accept a proposed substitution and no substitution shall be allowed without the prior written approval from both the Architect and the City. If the substitution results in a savings to the Contractor, the City shall be entitled to a credit for the amount saved as a result of the substitution.

ARTICLE III

CONTRACT TIME

3.1 Time and Liquidated Damages

3.1.1 On or after the award of the Contract, the City shall notify the Contractor of the date on which the Work shall commence ("the Commencement Date"). The Contractor shall receive no less than forty-eight (48) hours notice of the Commencement Date. The Contractor shall commence work on the Commencement Date, and the Work shall be carried on regularly and without interruption, and the Contractor shall achieve Substantial Completion of the Work no later than Sixty (60) calendar days after the Commencement Date. Site activities will be required on the Commencement Date. The number of calendar days from the Commencement Date, through the date set forth for Substantial Completion, shall constitute the "Contract Time." The Contractor shall furthermore achieve Final Completion of the Work no later than Thirty (30) calendar days after date of Substantial Completion.

3.1.2 The Contractor shall pay the City the sum of Seven Hundred and Fifty Dollars (\$750.00) per day for each and every calendar day of unexcused delay in beginning site activities as described in Article 3.1.1 above. The Contractor shall pay the City the sum of Seven Hundred and Fifty Dollars (\$750.00) per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Further, the Contractor shall pay the City at the rate of twenty-five percent (25%) of the sum set forth above for each and every calendar day of unexcused delay in achieving Final Completion of the Work beyond the number of days set forth in paragraph 3.1.1. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Contract. When the City reasonably believes that Substantial Completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the City has withheld payment, the

City shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

3.2 Commencement Date

3.2.1 The Commencement Date shall be determined once the Contractor has obtained any and all permits necessary to commence construction. After receiving award of the Contract, the Contractor shall endeavor to secure all necessary permits. The Contractor shall spare no expense and spend all necessary efforts in expeditiously pursuing the satisfaction of all necessary governmental entities' requests in obtaining information relevant to securing all necessary permits.

3.2.2 The Contractor shall spare no expense in personnel and time in order to keep the Building Department and the Planning and Development Department informed, current and satisfied regarding all necessary documentation in the form of shop drawings, clarifications, calculations, technical data, protocols, product approvals, etc. The Contractor shall be responsible for the timely and successful inspection of the Work and shall endeavor in providing the Building Official and the Inspectors with all the required documentation needed to successfully and timely continue the progress of the Work.

3.2.3 Under no circumstances will the City accept claims or be responsible for delays arising from failed, unsuccessful, untimely or late inspections or rejections of inspected Work due to the fault of the Contractor for not supplying all of the necessary documentation in the forms required or requested by the Building Official.

3.3 Substantial Completion

3.3.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the City can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose. A condition precedent for the achievement of Substantial Completion is the receipt by the City of any and all Certificates of Occupancy or other authorizations required for occupancy by any governmental or regulatory authority.

3.4 Time is of the Essence

3.4.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

City Initials _____

Vendor Initials _____

ARTICLE IV

CONTRACT PRICE

4.1 The Contract Price

4.1.1 The City shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of **Two million, five hundred eighty-nine thousand, eight hundred, seven dollars and eighty-eight cents (\$2,589,807.88).**

The sum set forth in this Paragraph 4.1.1 shall constitute the Contract Price which shall not be modified except by Change Order as provided in this Contract. The sum set forth in this Paragraph includes the following alternates:

\$93,252.55 Alternate No. 1-Vehicular Bridges

4.2 Unit Prices

4.2.1 In the event all, or any portion of, the Contract Price is to be determined by the application of unit prices, the following terms and conditions are applicable and controlling:

- (a) The number of units contained in the schedule of prices bid is an estimate only, and it is expressly acknowledged and agreed that payment to the Contractor shall be determined by the actual number of units incorporated in, or made necessary, by the Work;
- (b) Payment to the Contractor shall be made at the Contract Unit Prices applicable to each integral part of the Contract. The Contract Unit Prices shall be full compensation for all costs associated with completion of all unit price work in full conformity with the requirements of the Contract Documents;
- (c) Where the quantity of Work with respect to any item that is covered by a Contract Unit Price is increased or decreased by more than twenty percent (20%) from the quantity of such Work indicated or estimated in the Contract Documents, an appropriate Change Order shall be issued to adjust the Contract Unit Price, if warranted and justified, and if fully supported by documentation submitted to the City and the Architect and if a timely claim is made for same in accordance with the terms and provisions of this Contract.

ARTICLE V

PAYMENT OF THE CONTRACT PRICE

5.1 Schedule of Values

5.1.1 Within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the City and to the Architect a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Architect or the City may require to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. Any violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged in writing by the Architect and the City.

5.2 Payment Procedure

5.2.1 The City shall pay the Contract Price to the Contractor as provided below.

5.2.2 Progress Payments -- Based upon the Contractor's Applications for Payment submitted to the Architect and upon Certificates for Payment subsequently issued to the City by the Architect the City shall make progress payments to the Contractor on account of the Contract Price. Contractor shall use the AIA payment submittal method.

5.2.3 On or before the 25th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 20th day of the month to the Architect in such form and manner, and with such supporting data and content, as the City or the Architect may require. Contemporaneously with the submission of each Application for Payment, the Contractor shall submit a current shop drawing log reflecting the status of all shop drawings and submittals; a current CPM schedule as required by Paragraph 7.8 herein below; a current draw-down schedule as required by Paragraph 7.8.1 herein below; and, no less than four (4) 8 X 10 color aerial photographs, ten (10) ground photographs depicting in detail the current status of construction and the Contractor shall have a current set of As-Built drawings maintained on site and available for inspection. Submission of the shop-drawing log, CPM schedule, draw down schedule, and photographs as required herein shall be a condition precedent for payment to the Contractor. In its Application for Payment, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work plus ninety percent (90%) of that portion of the Contract Price properly allocable to materials or equipment properly stored on site (or elsewhere if approved in advance in writing by the City) for subsequent incorporation in the Work, less the total amount of previous payments received from the City. Payment for stored materials and equipment shall be conditioned upon the Contractor's proof satisfactory to the City, that the City has title to such materials and equipment and shall include proof of required insurance sufficient to

protect the City from any loss should the materials and equipment be lost, stolen or otherwise destroyed or damaged. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full accordance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Architect will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The City, in its sole discretion, may review the Work and the Application for Payment prior to any certification by the Architect and the City may, in its sole discretion, require the Architect and the Contractor to meet and confer with the City with respect to said Application for Payment prior to any certification of same. The Architect shall determine and certify to the City the amount properly owing to the Contractor. The City shall make partial payments on account of the Contract Price to the Contractor within twenty-five (25) days following the receipt of the Architect's approval of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the City or which the City shall have the right to withhold as authorized by this Contract. The Architect's certification of the Contractor's Application for Payment shall not preclude the City from the exercise of any of its rights as set forth in Paragraph 5.3 herein below.

5.2.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interests or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.

5.2.6 No progress payment, nor any use or occupancy of the Project by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

City Initials _____

Vendor Initials _____

5.3 Withheld Payment

5.3.1 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:

- (a) defective Work not remedied by the Contractor nor, in the opinion of the City, likely to be remedied by the Contractor;
- (b) claims of third parties against the City or the City's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the City or a third party to whom the City is, or may be, liable.
- (h) failure to comply with 5.2.3 of this Section.

In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this Subparagraph 5.3.1, the Contractor shall comply with such demand within ten (10) days of receipt of same.

5.4 Unexcused Failure to Pay

5.4.1 If within twenty-five (25) days after the date established herein for payment to the Contractor by the City, the City, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after ten (10) additional days' written notice to the City and the Architect and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the City have been received. Any payment not made within twenty-five (25) days after the date due shall bear interest at the City's investment earnings rate from the Florida State Board of Administration.

5.5 Substantial Completion

5.5.1 When the Contractor believes the Work is substantially complete, the Contractor shall submit to the Architect a list of items to be completed or corrected; the Architect or the City may supplement such list in the event the Contractor has omitted any incomplete or defective work. When the Architect, on the basis of an inspection, and after consultation with the City, determines the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the City and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the City and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate. Upon Substantial Completion of the Work, and execution by both the City and the Contractor of the Certificate of Substantial Completion, the City shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less three hundred percent (300%) of the reasonable cost as determined by the City and the Architect for completing all incomplete Work, correcting and bringing into conformance all defective and non-conforming Work, and handling all unsettled claims. If the Architect is unable to issue its Certificate of Substantial Completion after inspection of the Work, and is required to repeat its inspection of the Work, the Contractor shall bear the costs of such repeat inspection(s) for Substantial Completion which cost may be deducted by the City from any sums otherwise due the Contractor.

5.5.2 As-builts cost at the time of the substantial completion shall be held as \$10,000 plus 300% as stated in Section 5.5.1.

5.5.3 If required training and equipment materials have not been provided, the Owner will hold \$5,000 plus 300% as stated in Section 5.5.1.

5.6 Completion and Final Payment

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Architect thereof in writing. Thereupon, the Architect will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the City that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the City from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve Final Completion within the time set forth in Paragraph 3.1.1 hereinabove, the Contractor shall pay the City the sum of twenty-five percent (25%)

of the amount of liquidated damages set forth in paragraph 3.1.2. per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Contract. When the City reasonably believes that final completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.6.2 As a condition precedent to final payment to the Contractor, the Contractor shall deliver to the City the following documents in a form acceptable to the City; a final receipt and release of the City; the Contractor's affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the City; consent of surety to final payment; a duly executed assignment of any and all warranties required by the Contract Documents; any and all operating manuals required by the Contract Documents; certification that all personal instruction or training required by the Contract Documents for the operation of any Project systems has been completed; any and all manuals relating to Project materials or Project maintenance; executed change orders relating to any and all changes in the Work; and all as-built drawings required by the Contract Documents. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.

5.6.3 As a further condition precedent to final payment, the Contractor shall furnish to the City a complete and comprehensive set of as-built drawings; said as-built drawings are to be submitted on Mylar or other reproducible paper, and the City and the Contractor agree and acknowledge that the Contract Price includes all cost and expense associated with the production of said as-built drawings.

5.6.4 The City shall make final payment of all sums due the Contractor within twenty-five (25) days of the Architect's execution of a final Certificate for Payment.

5.6.5 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

City Initials _____

Vendor Initials _____

ARTICLE VI

THE CITY

6.1 Information, Services and Items Required from City

6.1.1 The "City" -- The City of Sunrise, as represented by the City Commission and its designees which is the owner of this Project.

6.1.2 The Building Department -- The Building Department is the City's Department responsible for assuring compliance with applicable regulations and the Florida Building Code as required. The Building Department is responsible for issuing permits, reviews, inspections, Certificates of Completion and Certificates of Occupancy and any other actions as described to be the responsibility of the Building Official under the Florida Building Code. The Building Department is also responsible for the enforcement of other state, federal and county regulations which may fall under the jurisdiction of the Building Official.

6.1.3 The Planning and Development Department, -- The City's Planning and Development Department is the City's Department responsible for issuing permits, reviews, inspections and any other actions necessary for the enforcement of the City's Ordinances affecting the site, drainage, zoning, water, sewer, irrigation and distribution lines and coverage, paving, traffic and landscaping. The Planning and Development Department issues Final Inspection Approvals for the work reviewed and inspected under the Planning and Development Department's permitted portion of the project's work. The City's Planning and Development Department assures compliance with roads, drainage and appearance of the site.

6.1.4 The City shall furnish to the Contractor, prior to execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefore. The City shall also furnish surveys, legal limitations and utility locations (if known), and a legal description, if available, of the Project site.

6.1.5 The Contractor is responsible for compliance with, and shall secure at its expense, all municipal review, construction, and inspection permits, provided, however, all City of Sunrise review, construction, and inspection fees will be waived save and except fees for inspection.

6.1.6 The City shall furnish the Contractor, free of charge, five (5) copies of the Contract Documents for execution of the Work.

City Initials _____

Vendor Initials _____

6.2 Right to Stop Work

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, the City shall have the right, but not an obligation, to order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the City orders that Work be resumed. In such event, the Contractor shall immediately obey such order. A stop work directive provided under this paragraph shall not entitle the Contractor to an extension of the completion date.

6.3 City's Right to Perform Work

6.3.1 If the Contractor's Work is stopped by the City under Paragraph 6.2, or if the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, and the Contractor fails within three (3) days of such stoppage, failure, or refusal, to provide adequate assurance to the City that the cause of such stoppage will be eliminated or corrected, then the City may, without prejudice to any other rights or remedies the City may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, plus compensation for the Architect's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the City, the Contractor shall pay the difference to the City.

6.4 Inspections

6.4.1 No inspector shall have authority to waive any requirements of the Contract Documents. Any failure or omission on the part of any inspector, the Architect or any agent of the City, to condemn any defective work or material shall not release the Contractor from its obligations to install the Work free from faults and defects and to promptly remove and repair any defective or deficient work. The Contractor hereby acknowledges and agrees that no inspector shall have authority to:

- (a) Authorize any deviation from the Contract Documents or approve any substitute materials or equipment;
- (b) Undertake any of the responsibilities of the Contractor, subcontractors or Contractor's superintendent;
- (c) Expedite the Work for the Contractor;
- (d) Advise on or issue directions relative to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents;

- (e) Advise on or issue directions as to safety precautions and programs in connection with the Work. Provided however, this shall not preclude the City inspector from notifying the Contractor of any hazardous or dangerous condition;
- (f) Participate in specialized field or laboratory tests.

6.5 Material or Equipment Furnished by the City

6.5.1 The City reserves the right to require the Contractor to assign to the City any of the Contractor's subcontracts, purchase orders or other agreements for the procurement of material or equipment. Any material or equipment purchased by the City pursuant to such an assignment is hereinafter referred to as "City Furnished Materials" and the responsibilities of the City and the Contractor relating to such City Furnished Materials shall be governed and controlled by the terms and conditions of this Contract.

6.5.2 Material and equipment suppliers shall be selected by the Contractor using competitive bids, and material and equipment contracts shall be awarded by the Contractor to the supplier whose bid is more advantageous to the City, price and all other relevant factors considered. The Contractor shall include the price of all construction materials and equipment in its bid unless the Contract Documents specifically state otherwise, and in the event the City elects to furnish any such material or equipment, an appropriate deductive change order will be issued.

6.5.3 The Contractor shall provide the City a list of all intended suppliers, vendors, and materialmen for consideration with respect to City Furnished Materials. This list shall be submitted within ten (10) days after execution of this Contract. The Contractor shall include price quotations from such suppliers, vendors, and materialmen as well as a specific description of the materials to be supplied and the estimated quantities of same.

6.5.4 Upon request by the City, and in a timely manner, the Contractor shall prepare Purchasing Requisition Request Forms which shall, in a form acceptable to the City, specifically identify the materials and equipment which the City may, in its discretion, elect to purchase directly. The Purchasing Requisition Request Form shall include the following:

- (a) The name, address, telephone number and contact person for the material supplier.
- (b) Manufacturer or brand, model or specification number of the item.
- (c) Quantity needed as estimated by the Contractor.
- (d) Any sales taxes associated with such quote.

- (e) Shipping and handling insurance cost.
- (f) 100% Performance Bond cost.
- (g) Delivery dates as established by the Contractor.
- (h) Any reduction in the Contractor's cost for both the Payment Bond and the Performance Bond.
- (i) Detail concerning bonds or letters of credit provided by the supplier if included in their proposal.

The Contractor shall include copies of vendors' quotations, and specifically reference any terms and conditions which have been negotiated with the vendors concerning letter of credit, terms, discounts, or special payments.

6.5.5 After receipt of the Purchasing Requisition Request Form, the City shall prepare a Purchase Order for each item of material which the City chooses to purchase directly. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Contractor, less any sales tax associated with such price. Promptly upon receipt of each Purchase Order, the Contractor shall implement its procedure for the purchase of the items in accordance with the terms of the Purchase Order and in a manner to assure timely delivery of items. The City's Purchasing Director shall be the approving authority for the City on Purchase Orders in conjunction with City Furnished Materials. The Purchase Order shall also provide for reimbursement of the cost to the supplier for providing required shipping and handling insurance and for providing a Performance Bond from the supplier to the City for full value of the Purchase Order, unless such insurance and bonding requirements were included in the quote provided by the supplier to the Contractor. The Purchase Order shall also require the delivery of the City Furnished Materials on the delivery dates provided by the Contractor in the Purchasing Requisition Request Form.

6.5.6 In conjunction with the execution of the Purchase Orders by the suppliers, the Contractor shall execute and deliver to the City one or more deductive Change Orders, referencing the full value of all City Furnished Materials to be provided by each supplier from whom the City elected to purchase material directly, plus all sales taxes associated with such materials in the Contractor's bid to the City, plus any savings to the Contractor in the cost of Payment and Performance Bonds associated with such City Furnished Materials. The Contract Administrator shall be the approving authority for the City on any deductive Change Order in conjunction with City Furnished Materials.

6.5.7 All shop drawings and submittals shall be made in accordance with Paragraph 7.10 of this Contract.

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6.5.8 The Contractor shall be fully responsible for all matters relating to the procurement of materials furnished by the City in accordance with this Paragraph 6.5 including, but not limited to, assuring the correct quantities, placing the order in a timely manner, and assuring coordination of purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, risk of loss, and damage of any other loss following acceptance of the items. The Contractor shall coordinate delivery schedules, sequence of delivery, loading, orientation, and other arrangements normally required by the Contractor for the particular materials furnished. The Contractor shall provide all services required for the unloading, handling and storage of materials through installation. The Contractor agrees to indemnify and hold harmless the City from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of the Contractor.

6.5.9 As City Furnished Materials are delivered to the job site, the Contractor shall visually inspect all shipments from the suppliers, and approve the vendor's invoice for material delivered. The Contractor shall assure that each delivery of City Furnished Materials is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order together with such additional information as the City may require. The Contractor will then forward the invoice to the City for payment.

6.5.10 The Contractor shall insure that City Furnished Materials conform to the Specifications, and determine prior to incorporation into the Work if such materials are patently defective, and whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Contractor discovers defects or non-conformities in City Furnished Materials upon such visual inspection, the Contractor shall not utilize such non-conforming or defective materials in the Work and instead shall promptly notify the City of the defective or non-conforming condition so that repair or replacement of those materials can occur without any undue delay or interruption to the Project. If the Contractor fails to perform such inspection and otherwise incorporates into the Work such defective or non-conforming City Furnished Materials, the condition of which it either knew or should have known by performance of an inspection, the Contractor shall be responsible for all damages to the City resulting from the Contractor's incorporation of such materials into the Project, including liquidated or delay damages.

6.5.11 The Contractor shall maintain records of all City Furnished Materials it incorporates into the Work from the stock of City Furnished Materials in its possession. The Contractor shall account monthly to the City for any City Furnished Materials delivered into the Contractor's possession, indicating portions of all such materials which have been incorporated into the Work.

6.5.12 The Contractor shall be responsible for obtaining and managing all warranties and guarantees for all materials and products as required by the Contract Documents. All repair, maintenance or damage-repair calls shall be forwarded to the Contractor for resolution with the appropriate supplier, vendor, or subcontractor.

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6.5.13 Notwithstanding the transfer of City Furnished Materials by the City to the Contractor's possession, the City shall retain legal and equitable title to any and all City Furnished Materials.

6.5.14 The transfer of possession of City Furnished Materials from the City to the contractor shall constitute a bailment for the mutual benefit of the City and the Contractor. The City shall be considered the bailor and the Contractor the bailee of the City Furnished Materials. The City Furnished Materials shall be considered returned to the City for purposes of their bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project.

6.5.15 The Contractor shall purchase and maintain insurance sufficient to protect against any loss of or damage to the City Furnished Materials. Such insurance shall cover the full value of any City Furnished Materials not yet incorporated into the Project during the period between the time the City first takes title to any of such City Furnished Materials and the time when the last of such City Furnished Materials is incorporated into the Project or consumed in the process of completing the Project.

6.5.16 The City shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs resulting from any delay in the delivery of, or defects in, the City Furnished Materials. The Contractor's sole or exclusive remedy shall be an extension of the Contract Time for such reasonable time as determined by the City.

6.5.17 On a monthly basis, the Contractor shall be required to review invoices submitted by all suppliers of City Furnished Materials delivered to the Project sites during that month and either concur or object to the City's issuance of payment to the suppliers, based upon the Contractor's records of materials delivered to the site and any defects detected in such materials.

6.5.18 In order to arrange for the prompt payment to the supplier of City Furnished Materials, the Contractor shall provide to the City a Requisition for Payment within fifteen (15) days from receipt and acceptance of the goods or materials. The requisition shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the City. Upon receipt of the appropriate documentation, the City shall prepare a check drawn to the supplier based upon the requisition data provided. This check will be released, delivered and remitted directly to the supplier within forty-five (45) days from receipt by the City of the Requisition for Payment. The Contractor agrees to assist the City to immediately obtain partial or final release of waivers as appropriate.

6.5.19 At the end of the Project, the Contractor will be provided with a deductive Change Order for the cost plus applicable sales taxes of any City Furnished Material overruns and will be provided with an additive change order representing the unspent value plus applicable sales taxes of any City Furnished Material underruns. Excess City Furnished Material shall be removed from the site and disposed of by the Contractor as directed by the City.

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6.6 Coordination and Scheduling of Work

6.6.1 The Contractor shall cooperate with the City and any separate contractors retained by the City, and the Contractor shall carefully coordinate and schedule the Work as may be required to accommodate without delay or interference the Work of the City or any of its separate contractors.

6.7 Contractor Responsible for Delays

6.7.1 The Contractor shall be responsible for any damages caused to the City as a result of any delays caused by the Contractor.

6.8 City's Right to Occupy

6.8.1 The City reserves the right to occupy any part of the Project when same is Substantially Complete. It is expressly agreed, however, that partial occupancy of any part of the Project does not activate any warranty obligations of the Contractor and any warranties which contain time limitations shall commence on the date of Final Completion unless otherwise expressly specified in the Contract Documents.

ARTICLE VII

THE CONTRACTOR

7.1 Upon providing no less than forty-eight (48) hours notice to the Contractor, the City may conduct a pre-construction conference at a time and place set forth in the aforesaid notice. ATTENDANCE AT ALL PRE-CONSTRUCTION CONFERENCE(S) IS MANDATORY AND FAILURE TO ATTEND SHALL BE A MATERIAL BREACH OF THIS CONTRACT.

7.2 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

7.3 The Contractor shall perform the Work strictly in accordance with this Contract. The Contractor shall also be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

7.4 Contractor's Professional Standard

7.4.1 City's engagement of the Contractor is based upon the Contractor's representations to the City that:

- (a) Contractor has carefully reviewed all Construction Documents prior to signing this Contract.
- (b) Contractor is an organization experienced in, and qualified, willing and able to provide construction of the nature and type necessary to perform the Work;
- (c) Contractor is authorized and licensed to do business in the State of Florida, Broward County and the City of Sunrise; and
- (d) Contractor shall furnish labor, material, equipment and services (i) which expeditiously, economically and properly complete the Work in the manner most consistent with the Owner's interests and objectives, (ii) in accordance with the Construction Documents, and (iii) in accordance with the highest standards currently practiced by persons and entities performing comparable labor, material, equipment and services on projects of similar size and complexity.

7.4.2 The Contractor shall administer, manage, supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the City for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.5 Warranty

7.5.1 The Contractor warrants to the City that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

7.5.2 Any warranty required or received from a Subcontractor, manufacturer, or supplier is herein assigned by the Contractor to the City effective immediately upon issuance of the fully executed Certificate of Substantial Completion. Furthermore, the Contractor agrees to supply to the City the originals of all such warranties where same are in writing, and further agrees to execute, if requested by the City, separate assignments of warranty on a form furnished by the City.

7.6 The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work save and except as set forth in Paragraph 6.1.7 hereinabove. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

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7.7 Supervision

7.7.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the City or the Architect.

7.7.2 Key administrative, managerial and supervisory personnel assigned by the Contractor to this Project are as follows:

<u>Name</u>	<u>Function</u>
Jim Armstrong	Division Manager
Paul Cope	Irrigation Manager
Scott Greenwood	Irrigation Supervisor
Jose Padilla	Site Supervisor

The Contractor shall furnish to the City complete resumes of each of the individuals named above. So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the City agrees to the contrary in writing or unless the City requests the removal of any such individual from the Project. In the event the City requests the removal of any of the individuals named above, the Contractor shall immediately comply and shall immediately replace such individual with a qualified substitute to whom the City makes no objection. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.7.2 as though such individuals had been listed above.

7.8 The Contractor, within fifteen (15) days of commencing the Work, shall submit to the City and the Architect for their information, the Contractor's schedule for completing the Work. The Contractor's schedule shall be presented in the critical path (CPM) format. The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the City and the Architect with each Application for Payment. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.8 shall constitute a material breach of this Contract.

7.8.1 The Contractor, within fifteen (15) days of commencing the Work, shall submit to the City and the Architect for their information, an anticipated monthly draw schedule for the duration of the Work. If during the course of performing the Work the Contractor anticipates a substantial change in the draw schedule, the Contractor shall notify the City and the Architect within three (3)

days of anticipating such change. For purposes of this paragraph, a substantial change shall be any increase or decrease equaling or exceeding ten percent (10%) of any anticipated monthly draw.

7.9 The Contractor shall continuously maintain at the site, in an orderly fashion and format acceptable to the City, for the benefit of the City and the Architect one record copy of this Contract and all Contract Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the City and Architect the approved Shop Drawings, Product Data, Samples and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the City.

7.9.1 No less than weekly, the Contractor shall conduct a Project meeting which shall include the Contractor's administrative, managerial and supervisory personnel and representatives of each subcontractor working on the Project site. The meeting shall address, but shall not be limited to, the current status of the Work, including the current Project schedule and the existence of any defective or deficient work as well as the appropriate action required to correct or replace such work. The City and the Architect shall have the right, but not the duty, to attend such weekly meetings. The Contractor shall maintain detailed minutes of each such weekly meetings and shall distribute typewritten copies of such minutes to the City and the Architect no later than the close of the next workday following completion of such meeting. The Contractor shall further require its General Superintendent to maintain a daily job diary which shall include for each work day the daily weather conditions, the identity of each subcontractor working on the site, the manpower of each subcontractor working on the site, the identity of all visitors to the Project site, and any and all other information reflecting any delays, hindrances, interferences, or other problems encountered or incurred on the Project site. Each week the Contractor shall furnish to the City and the Architect on a weekly basis full and complete copies of said daily job diary.

7.10 Shop Drawings, Product Data and Samples

7.10.1 Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.10.2 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittals shall have been approved by the Architect. Approval by the Architect, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract.

7.10.3 The Contractor shall maintain a log of all shop drawings, product data and samples submitted to the Architect and the City including, but not limited to, identification of the item of work according to appropriate specification section; date of receipt from appropriate subcontractor or supplier; date of review by the Contractor; date of submission to the Architect date of return from the

Architect date of return to the subcontractor or supplier; status of review by the Architect and any required re-submittal information. A true and correct copy of this log shall be submitted with each Application for Payment and receipt of same by the Architect shall be a condition precedent for approval of the Application for Payment.

7.11 Cleaning the Site and the Project

7.11.1 The Contractor shall keep the site reasonably clean during performance of the Work, shall remove debris, trash and garbage from the Site daily and allow no accumulation of debris, garbage or trash on the Site. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, together with all of the Contractor's property therefrom.

7.12 Access to Work

7.12.1 The City, the Architect and representatives of the U.S. Public Health Service, Broward County Building Trades Council and the State of Florida shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested.

7.13 Safety

7.13.1 The Contractor shall take all reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to, its employees on the Work and all other persons who may be affected thereby; the Work and materials and equipment to be incorporated therein; and all other property at the site or adjacent thereto including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss, and shall give all notices required by same; this requirement includes, but is not limited to, the United States Occupational Safety and Health Act and the Florida Trench Safety Act, Florida Statute § 553.60.

7.13.2 The Contractor is hereby made aware that an 8' high chain link fence will be required around all lakes while such lake is being constructed in accordance with the City of Sunrise Code of Ordinances.

7.14 Indemnity

7.14.1 In consideration of the separate sum of \$10.00 (which \$10.00 is the first \$10.00 of the Contract Price) for the payment, and to the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the City of Sunrise, its officials and employees from or on account any and all suits, actions, or claims for injuries, losses, damages, liabilities, costs, or expenses, including, but not limited to reasonable attorney fees, arising from this ensuing contract or which are incidental

to or are in any way connected with this proposal, to the extent caused by the negligence, recklessness or intentional misconduct of the Contractor or Contractor's subcontractors, agents, or employees.

7.15 Value Engineering Incentive

7.15.1 The City encourages the Contractor to make timely value engineering and cost savings recommendations. In the event the City approves by duly executed change order any value engineering or cost savings recommendation of the Contractor, and in the further event the Contract Sum is reduced thereby, any savings shall be shared with Seventy Five Percent (75%) being allocated to the City and Twenty Five Percent (25%) being allocated to the Contractor. It is agreed, however, that the Contractor shall procure and obtain at its sole cost and expense all change orders, drawings, specifications, permits, approvals, or other documents required in order to implement the value engineering or cost savings recommendation. ANY CLAIM UNDER THIS PARAGRAPH MUST BE SUBMITTED IN WRITING TO THE CITY AND THE ARCHITECT PRIOR TO THE EXECUTION OF THE CHANGE ORDER INCORPORATING THE CONTRACTOR'S RECOMMENDATION OTHERWISE SAID CLAIM IS EXPRESSLY WAIVED. Any savings allocated to the Contractor under this Paragraph shall be paid at the time of Final Payment to the Contractor.

7.16 Miscellaneous

7.16.1 Prior to commencement of the Work, the Contractor shall submit to the City a plan for site access and control of construction traffic. Said plan shall include, but not be limited to, an enumeration of each construction access point to the site and a description of how access will be controlled and regulated; a description of any impact that construction traffic may have on the public streets and highways, and the Contractor's plan for minimizing and reducing such impact; and, the name and address of the individual employed by the Contractor who shall have responsibility for control and management of construction traffic. Approval by the City of this plan is a condition precedent to payment of any sums to the Contractor. The Contractor furthermore agrees to cooperate with the City and all other appropriate governmental entities with respect to the control, regulation, scheduling and management of construction traffic.

7.16.2 The Contractor shall be responsible for, and shall pay the cost of, all temporary facilities used, or made available, during the course of the Work. These facilities include, but shall not be limited to, electric power, gas, water, sewage and sanitation, waste removal and disposal, telephone, and temporary office facilities. The Contractor shall timely pay for all such temporary facilities and shall coordinate the installation and removal of such facilities including, but not limited to, any required coordination with any utility company. Furthermore, the Contractor shall be responsible for, and shall pay the cost of, any utility work which may be necessary in order to perform the Work required by the Contract Documents; this responsibility includes, but is not limited

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to, the cost of installing, moving, or relocating electric, water, sewer, gas, or other utility lines, wires, poles, pipe, and any other equipment of every kind and nature.

7.16.3 After first giving at least seventy-two (72) hours written notice to the City and the Architect the Contractor shall conduct any and all testing required under the Contract Documents and report the results of same to the City and the Architect within twenty-four (24) hours of receipt unless the City or the Architect instructs otherwise. The Contractor shall also cooperate with the City and the Architect in the event the City or the Architect elects to conduct testing for any purpose. The Contractor shall make the site, or any relevant portion thereof, available for such testing by the City or the Architect and the Contractor shall so schedule and coordinate its work so as not to interfere with any testing by the City or the Architect. When requested by the City or the Architect the Contractor shall furthermore uncover Work and otherwise assist in testing as may be required by the City or the Architect. The services requested by the City which are required to be provided by an Independent Testing Laboratory shall be paid by the City unless otherwise stated in the Contract Documents. Contractor may not rely upon any testing performed by the City or the Architect but shall remain solely responsible for insuring compliance with all Contract Documents and testing requirements. The Contractor shall be responsible for the payment of any of its testing.

7.16.4 Upon prior approval by the City, the Contractor may erect a temporary Project sign which shall be no larger than four (4) feet by eight (8) feet and which shall correctly identify the Contractor, the City and its Officials, the Project Architect and any consulting Architect. The City logo is also required to be displayed on this sign. The Contractor further agrees that the City may require additional information to be included on the temporary Project sign. An accurate representation and copy of the proposed sign must be submitted to the City, and the City must approve in writing the sign prior to its erection.

ARTICLE VIII

CONTRACT ADMINISTRATION

8.1 The Architect

8.1.1 The Architect for this project is McCumber Golf Attn: Jeffrey Dluovsky whose address is 7502 Plantation Bay Drive Jacksonville FL 32244, Telephone No. (904)778-8333.

In the event the City should find it necessary or convenient to replace the Architect the City shall retain a replacement Architect and the status of the replacement Architect shall be that of the former Architect.

8.2 Architect's Administration

8.2.1 The Architect, unless otherwise directed by the City in writing, will perform those duties and discharge those responsibilities allocated to the Architect as set forth in this Contract. The

Architect shall be the City's representative from the effective date of this Contract until final payment has been made. The Architect shall be authorized to act on behalf of the City only to the extent provided in this Contract.

8.2.2 The City and the Contractor shall communicate with each other in the first instance through the Architect. The Contractor and the Architect, however, shall copy the City's designated representative with any and all written communications by and between the parties. The City's designated representative for the receipt of any such communications, or copies of same, is David Abderhalden, whose address is 3495 N. Hiatus Road, Suite 100, Sunrise FL 33351. The City reserves the right to change its designated representative upon written notice to the Contractor and Architect.

8.2.3 The Architect shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance there under by the Contractor. The Architect shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Architect will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Architect shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Architect deems it necessary or advisable, the Architect shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Architect will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

8.2.7 The Architect will prepare Change Orders and may authorize minor changes in the Work upon approval from the City by Field Order as provided elsewhere herein.

8.2.8 The Architect shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of Final Completion, will receive and forward to the City for the City's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2.9 The Contractor agrees, acknowledges, and warrants that it has no third party beneficiary rights, or other rights, arising out of any contract by and between the City and the Architect and, in the event of any conflict between the terms and provisions of the contract by and

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between the City and the Architect and this Contract, the terms of this Contract shall control with respect to the Contractor.

8.2.10 If the Contractor fails any inspection which requires a re-inspection by the Architect or any of its design consultants, the Contractor shall bear the cost of such repeat inspection(s) which cost may be deducted by the City from any sums otherwise due the Contractor.

8.3 Claims by the Contractor

8.3.1 Except as prohibited in Paragraph 8.3.5.1 herein below, all Contractor claims shall be initiated by written notice and claim to the City and the Architect. Such written notice and claim must be furnished within three (3) days after occurrence of the event, or the first appearance of the condition giving rise to the claim.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim under this Paragraph 8.3 shall be reflected by a Change Order executed by the City, the Architect and the Contractor.

8.3.3 Claims for Concealed and Unknown Conditions -- Should concealed and unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within three (3) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City and the Architect written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

8.3.4 Claims for Additional Costs -- Except as prohibited in Paragraph 8.3.5 herein below, if the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the Architect and the City written notice of such claim within three (3) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

8.3.4.1 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's cost shall be strictly limited

to direct costs incurred by the Contractor. Direct costs do not include the Contractor's home office overhead, loss of efficiency, consequential damages of the Contractor, or equipment costs in excess of actual equipment rental paid by the Contractor to a third party. The City shall not be liable to the Contractor for claims of third parties, including Subcontractors, unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction.

8.3.5 Claims for Additional Time -- If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the City and the Architect for such reasonable time as the Architect and the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than three (3) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. Said claim shall specifically include, among other things, an adjusted critical path (CPM) schedule reflecting precisely the delay and its claimed impact upon the Contractor's future performance. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

8.3.5.1 In no event, and under no circumstances, shall the Contract Sum be increased for, nor shall the Contractor claim, recover, or receive payment for, any cost, expense, damages, or compensation of any kind by reason of any delay to the Project, whether critical or non-critical, and whether caused in whole or in part by the City. The Contractor shall not be entitled to any direct, indirect, consequential, impact, or other costs, expenses, or damages, including but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever, whether such delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. It is further agreed that such direct costs do include the Contractor's home office overhead, loss of efficiency, consequential damages, or equipment costs in excess of actual equipment rental paid by the Contractor to a third party. The Contractor's sole and exclusive remedy for delay, hindrance, and disruption shall be an extension of the Contract Time provided a claim for same is made and is allowable pursuant to the provisions of Paragraph 8.3.5 hereinabove.

8.4 Field Orders

8.4.1 The Architect, after first obtaining approval from the City, shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

City Initials _____

Vendor Initials _____

ARTICLE IX

SUBCONTRACTORS

9.1 Definition

9.1.1 A Subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work.

9.2 Award of Subcontracts

9.2.1 Upon execution of the Contract, or as may be required by the Instructions to Contractors, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the City against the Contractor herein, including those rights afforded to the City by Subparagraph 12.2.1 below.

ARTICLE X

CHANGES IN THE WORK

10.1 Changes Permitted

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 Change Order Defined

10.2.1 Change Order shall mean a written order to the Contractor executed by the City and the Architect issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

10.3 Changes in the Contract Price

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the City and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the City and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 The Contractor shall be bound by the following conditions and procedures governing additional work under the Contract.

10.3.2.1 Any change order must be recommended by the City's representative and approved by the City before any steps are taken to implement the change order.

10.3.2.2 Should the Contractor commence work without making a claim in writing for unforeseen extra work encountered, it will be construed as an acceptance and agreement that such work is required under the Contract and no further claim for such extras will be considered or allowed by the City.

10.3.2.3 Changes in the Work directed by the Architect shall become part of the Contract only by written change order.

10.3.2.4 Information regarding changes in the Work for additional work, credits and adjustments under the Contract shall be promptly transmitted in writing by the Contractor to the Architect with full explanations and justifications for consideration in preparing a change order to the Contract.

10.3.2.5 Contractor shall allow twenty-one (21) calendar days for the Architect to review and respond to the City on Contractor submitted Requests for Change Order pricing and Contractor submitted pricing for City initiated proposal requests. This review time is only for correctly submitting pricing. Submitted pricing found not to be in correct format, or containing pricing that relates to Work clearly not part of the change, or contains Subcontractor pricing not in the correct format, or contains Subcontractor pricing that relates to Work clearly not part of the change, will not be reviewed and returned to the Contractor for proper submission and as such, no Contractor claims for delay will be accepted as a result of extended response time due to improper pricing submission.

10.3.2.6 The Architect will review properly submitted Contractor pricing and compare submitted pricing with published pricing data contained in the Building Cost Data, Mechanical Cost Data and Electrical Cost Data, latest edition, as published by R.S. Means Company, Inc. Contractor submitted pricing found to be in excess of five (5%) percent above the stated published pricing will not be accepted and as such, no Contractor claims for delay will be accepted as a result of extended response time due to excessive pricing submittal by the Contractor.

10.3.3 The value of any change ordered under the Contract for extra work or any reductions in work required, shall be determined under one or more of the following procedures before a written change order is issued.

10.3.3.1 By Unit Price named in the contract or subsequently agreed upon by the City and the Contractor, which prices shall include Contractor's overhead and profit.

10.3.3.2 By Lump Sum Price agreed upon by the City and the Contractor, which price shall include overhead and profit. A breakdown of the estimated costs comprising the lump sum price may be required by the Architect for review. Percentage for overhead and profit shall be determined in accordance with the method listed described under Overhead and Profit below.

10.3.3.3 By a Cost Plus Price on total actual costs, plus an added percentage, all determined as described under Overhead and Profit below.

10.3.3.4 Overhead and Profit

- (a) Subcontractor's overhead, including supervision and the furnishing, use and maintenance of small tools and ordinary equipment incidental to and required for the Work shall be just and fully compensated for by adding an amount equal to TEN PERCENT (10%) of the sum of material and labor costs as defined under Subcontractor's profit below, but excluding equipment rental costs.
- (b) Subcontractor's profit may then be added to the above material costs and labor costs including the Overhead allowance at the rate of TEN PERCENT (10%) of the sum of those costs, excluding equipment rental costs.
- (c) Contractor's overhead, including general supervision and the furnishing, use and maintenance of small tools incidental to and required for the Work accomplished by its own direct labor shall be considered to be just and fully compensated for by adding an amount equal to SEVEN AND ONE HALF PERCENT (7 1/2%) of the sum of material and labor costs as defined under Material costs and Labor costs below, but excluding equipment rental costs and bond allowance.
- (d) Contractor's overhead, including general supervision and the furnishing, use and maintenance of small tools and equipment incidental to and required for the Work accomplished by subcontractors shall be considered to be just and fully compensated for by adding an amount equal to FIVE PERCENT (5%) of the sum of material and labor costs as defined under Material costs and Labor costs below, but excluding equipment rental costs and bond allowance.

- (e) Contractor's profit may then be added into the above material costs and labor costs, including the Overhead allowance at the rate of TEN PERCENT (10%) of the sum of those costs, excluding equipment rental costs.

10.3.3.5 Bond Allowance: For maintaining the Performance Bond at 100% of the Contract Price, a sum of ONE PERCENT (1%) of the total cost of the change (including material, labor, overhead and profit, and equipment rental) shall be allowed on all change orders.

10.3.3.6 Material costs actually recorded by the Contractor and the subcontractor as materials are delivered to the site and, as evidenced from originally received invoices, listing appropriate quantities and unit prices. Records in proper form shall be maintained and made available to Architect at all times.

10.3.3.7 Labor Costs represented by the actual wages paid to all laborers, apprentices, journeymen, and foremen involved in and necessary to completing the particular construction operations, for each day and every hour such labor teams and foremen are actually employed on the extra work required, including the net cost of insurance, social security and Workmen's Compensation. Records in proper form shall be maintained and be made available to the Architect at all times.

10.3.3.8 Rentals for special equipment or machinery such as power driven roller, tractors, trucks, shovels, drills, mixers, pumps, hoists, etc. required for the economical performance of the work at reasonable rental prices agreed upon before work commences, shall be allowed the Contractor and subcontractors by the Architect for each and every hour such special equipment is in use on the particular work. To the sum of such equipment rentals, no additional percentage shall be added.

10.4 Minor Changes

10.4.1 The Architect, after first obtaining express written approval from the City, shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the City and the Contractor. The Contractor shall promptly carry out such written Field Orders.

10.5 Effect of Executed Change Order

10.5.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.6 Notice to Surety; Consent

10.6.1 As a condition precedent for the certification, approval or payment of any Application for Payment, or as a condition precedent for the approval or execution by the City of any Change Order, or as a condition precedent for any action required by the City under this Contract, the City may demand, and the Contractor shall furnish, an appropriately executed Consent of Surety in such form as the City may specify.

10.7 Emergency Change Orders

10.7.1 In an emergency which presents immediate danger to person or property, the City's designated representative may order a change in the Work which shall be documented within three (3) days from the inception of said emergency in accordance with the change order requirements of Article X of this Contract.

ARTICLE XI

UNCOVERING AND CORRECTING WORK

11.1 Uncovering Work

11.1.1 If any of the Work is covered contrary to the Architect's request or to any provisions of this Contract, it shall, if required by the Architect or the City, be uncovered for the Architect inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered in a manner not inconsistent with Subparagraph 11.1.1 above, it shall, if required by the Architect or the City, be uncovered for the inspection of the Architect or the City. If such Work conforms strictly with this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the City. If such Work does not strictly conform with this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

11.2 Correcting Work

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Architect as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the City for the Architect's services and expenses made necessary thereby.

11.2.2 If within one (1) year after Final Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the City. This obligation shall survive final payment by the City and termination of this Contract. With respect to Work completed after Final Completion, this one-year obligation to specifically correct defective and non-conforming Work shall be extended by the period

of time which elapses between Final Completion and acceptance of the subject Work by the City and Architect.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

11.3 The City May Accept Defective or Non-conforming Work

11.3.1 If the City chooses to accept defective or non-conforming Work, the City may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or non-conforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or non-conforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the City for its acceptance of defective or non-conforming Work, the Contractor shall, upon written demand from the City, pay the City such remaining compensation for accepting defective or non-conforming Work.

ARTICLE XII

CONTRACT TERMINATION

12.1 Termination by the Contractor

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon twenty (20) days' written notice to the City and the Architect terminate performance under this Contract and recover from the City payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the City shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Architect and the City. In such event, the Contractor shall be entitled to recover from the City as though the City had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 Termination by the City

12.2.1 For Convenience

12.2.1.1 The City may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The City shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the City such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4

- (a) The Contractor shall submit a termination claim to the City and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Architect. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Contractor, an amount derived in accordance with sub-paragraph (c) below.
- (b) The City and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.
- (c) Absent agreement to the amount due to the Contractor, the City shall pay the Contractor the following amounts:
 - (i) Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - (ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead in the amount of seven percent (7%) of the Contractor's direct costs, and a reasonable allowance for profit in the amount of five percent (5%) of the

Contractor's direct costs (such profit shall not include anticipated profit or consequential damages); and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

- (iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 For Cause

12.2.2.1 If the Contractor refuses or fails to prosecute the Work in a timely manner, supply enough properly skilled workers, administrative, managerial and supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Contract, then the City may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price exceeds the cost of finishing the work, including compensation for the Architect's additional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the City. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the City for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a

City Initials _____

Vendor Initials _____

Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

ARTICLE XIII

INSURANCE

13.1 Contractor agrees, at its sole expense, to maintain on a primary basis during the life of this Contract, or the performance of work hereunder, insurance coverages, limits, and endorsements as required herein.

13.2 The Contractor agrees the insurance requirements herein as well as City's review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Contract.

13.3 Commercial General Liability. Contractor agrees to maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence **\$2,000,000** Annual Aggregate. Contractor agrees it's coverage will not contain any restrictive endorsement(s) excluding or limiting Product/Completed Operations, Independent Contractors, Broad Form Property Damage, X-C-U Coverage, Contractual Liability or Cross Liability. The Contractor agrees any Self-Insured-Retention or deductible shall not exceed \$25,000.

13.4 Business Automobile Liability. Contractor agrees to maintain Business Automobile Liability at a limit of liability not less than **\$1,000,000** Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

13.5 Worker's Compensation & Employer's Liability. The Contractor agrees to maintain its own Worker's Compensation & Employers Liability Insurance. (NOTE: Elective exemptions or coverage through an employee leasing arrangement will NOT satisfy this requirement).

13.6 Additional Insured Endorsement. The Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability with a CG 2010 Additional Insured - Owners, Lessees, or Contractors, or similar endorsement providing equal or broader Additional Insured coverage.

13.6.1 Additionally, the Contractor agrees to endorse the City as an Additional Insured under the Commercial Umbrella/Excess Liability.

13.6.2 The name of the organization endorsed as Additional Insured for all endorsement shall read "City of Sunrise".

13.7 Deductibles, Coinsurance Penalties & Self-Insured Retention. The Contractor agrees to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, self-insured retention, or coverage exclusion or limitation. For deductible amounts that exceed the amounts stated herein that are acceptable to City, the Contractor agrees, when requested by City, to maintain a Commercial Surety Bond in an amount equal to said deductible amount.

13.8 Waiver of Subrogation. The Contractor agrees by entering into this written Contract to a Waiver of Subrogation in favor of the City, Contractor, sub-contractor, architects, or engineers for each required policy providing coverage during the life of this Contract. When required by the insurer, or should a policy condition not permit an the Contractor to enter into an pre-loss agreement to waive subrogation without an endorsement, the Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition that specifically prohibits such an endorsement, or voids coverage should the Contractor enter into such an agreement on a pre-loss basis.

13.9 Right to Revise or Reject. The Contractor agrees the City reserves the right, but not the obligation, to review or revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the City reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage due of its poor financial condition or failure to operating legally in the State of Florida. In such events, City shall provide Contractor written notice of such revisions or rejections.

13.10 No Representation of Coverage Adequacy. The coverages, limits or endorsements required herein protect the primary interests of the City, and the Contractor agrees in no way should these coverages, limits or endorsements required be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposures, whether as a result of the Project or otherwise.

13.11 Certificate of Insurance. The Contractor agrees to provide City with Certificate(s) of Insurance that clearly evidence the Contractor's insurance contains the minimum coverages, limits, and endorsements set forth herein. A minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage shall be identified on each Certificate(s) of Insurance. In the event the City is notified that a required insurance coverage will cancel or expire during the period of this Contract, the Contractor agrees to furnish City prior to the expiration of such insurance, a new Certificate of Insurance evidencing replacement coverage. When notified by City, the Contractor agrees not continue work pursuant to this Contract, unless all required insurance remains in effect.

13.11.1 The City shall have the right, but not the obligation, of prohibiting Contractor from entering the Project site until a new Certificate of Insurance is provided to the City evidencing the

replacement coverage. The Contractor agrees the City reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to the City. If the Contractor fails to maintain the insurance as set forth herein, the Contractor agrees the City shall have the right, but not the obligation, to purchase replacement insurance, which the Contractor agrees to reimburse any premiums or expenses incurred by the City.

13.11.2 The Contractor agrees the Certificate(s) of Insurance shall:

1. Clearly indicate the City has been endorsed on the Commercial General Liability with a CG 2010 Additional Insured - Owners, Lessees, or Contractors, or similar endorsement providing equal or greater Additional Insured coverage. (**Attach an actual copy of the endorsement...contact your insurance agent**).
2. Clearly indicate the project name and project number.
3. Clearly identify each policy's limits, flat & percentage deductibles, sub-limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.
4. Clearly indicate a minimum thirty (30) day endeavor to notify requirement in the event of cancellation or non-renewal of coverage.
5. Clearly indicated Certificate Holder(s) as follows:

Original to:

Copy to:

City of Sunrise
Purchasing Department
Attn: Purchasing Director
10770 W. Oakland Park Blvd
Sunrise, FL 33351

City of Sunrise
Risk Management Division
Attn: Risk Manager
10770 W Oakland Park Blvd
Sunrise, FL 33351

ARTICLE XIV

MISCELLANEOUS

14.1 Governing Law/Jurisdiction/Venue

14.1.1 The Contract shall be governed by the laws of the State of Florida. Should the Parties be involved in legal action arising under, or connected to, this Agreement, each party will be responsible for their own attorney's fees and costs. The venue for any litigation will be Broward County, Florida. Both Parties hereby agree to waive a jury trial, and will proceed to a trial by judge if necessary.

14.2 Successors and Assigns

14.2.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the City.

14.3 Surety Bonds

14.3.1 The Contractor shall furnish separate performance and payment bonds to the City. Each bond shall set forth a penal sum in an amount not less than one hundred percent (100%) of the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form required by the City and shall be executed by a surety, or sureties, reasonably suitable to the City.

ARTICLE XV

WAIVER OF JURY TRIAL

15.1 City and Contractor hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract, arising out of, under, or in connection with the construction of the Work, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

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IN WITNESS WHEREOF, the Purchasing Director, authorized to execute same by City Commission, has made and executed this Contract on behalf of the City the day and year below written and Contractor has hereunto set its hand the day and year below written.

CITY OF SUNRISE

By: _____

Print: Glenn R. Cummings

Title: Acting Purchasing Director

Date: _____

Approved as to Form and Legal Sufficiency
Office of the City Attorney for
Sunrise, Florida

STUART R. MICHELSON, City Attorney
City of Sunrise
10770 W. Oakland Park Boulevard
Sunrise, Florida 33351
Telephone: (954) 746-3300

By: _____

Stuart R. Michelson

City Initials _____

Vendor Initials _____

WITNESSES

CONTRACTOR

By: _____
[UNDER SEAL]

Title

____ day of _____, 2009

Printed Name

Address

END OF DOCUMENT

City Initials _____

Vendor Initials _____