AGENDA

Lake Park Town Commission
Town of Lake Park, Florida
Regular Commission Meeting
Wednesday, January 6, 2010, Immediately following the CRA Board Meeting
Lake Park Town Hall
535 Park Avenue

Desca DuBois	—	**Mayor**
Jeff Carey	—	**Vice-Mayor**
Edward Daly	—	**Commissioner**
Patricia Osterman	—	**Commissioner**
Kendall Rumsey	—	**Commissioner**
Maria V. Davis	—	**Town Manager**
Thomas J. Baird, Esq.	—	**Town Attorney**
Vivian M. Lemley, CMC	—	**Town Clerk**

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision of the Town Commission, with respect to any matter considered at this meeting, such interested person will need a record of the proceedings, and for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. ***Persons with disabilities requiring accommodations in order to participate in the meeting should contact the Town Clerk's office by calling 881-3311 at least 48 hours in advance to request accommodations.***

A. CALL TO ORDER

B. INVOCATION

C. PLEDGE OF ALLEGIANCE

D. ROLL CALL

E. ADDITIONS/DELETIONS - APPROVAL OF AGENDA

F. PUBLIC and OTHER COMMENT

This time is provided for audience members to address items that do not appear on the Agenda. Please complete a comment card and provide it to the Town Clerk so speakers may be announced. Please remember, comments are limited to a TOTAL of three minutes.

G. **CONSENT AGENDA: All matters listed under this item are considered routine and action will be taken by one motion. There will be no separate discussion of these items unless a Commissioner or person so requests, in which event the item will be removed from the general order of business and considered in its normal sequence on the Agenda. Any person wishing to speak on an Agenda item is asked to complete a public comment card located on either side of the Chambers and given to the Town Clerk. Cards must be submitted before the item is discussed.**

For Approval:

1. **Resolution No. 01-01-10 West Ilex Park Improvements Agreement** **Tab 1**
2. **Supervisor of Elections for Vote Processing Equipment Use and Election Services** **Tab 2**

H. **PUBLIC HEARING(S)**

ORDINANCE ON SECOND READING:

3. ORDINANCE NO. 18-2009 - Text change to District C-4 **Tab 3**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 78, ARTICLE III, SECTION 78-74 OF THE TOWN'S CODE OF ORDINANCES, ENTITLED "C-4 BUSINESS DISTRICT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

4. ORDINANCE NO. 19-2009– PADD Signage **Tab 4**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING THE LAKE PARK MUNICIPAL CODE AT CHAPTER 78 ENTITLED "ZONING," ARTICLE III, SECTION 78-70, ENTITLED "PARK AVENUE DOWNTOWN DISTRICT"; AMENDING SECTION 78-70(l) ENTITLED "WAIVERS"; AMENDING SECTION 78-70(n) ENTITLED "SUPPLEMENTAL DISTRICT REGULATIONS" TO PROVIDE ADDITIONAL PROVISIONS PERTAINING TO OBSCURING GROUND FLOOR WINDOWS; AMENDING SECTION 78-70(p) ENTITLED "SIGNS" AT SUBSECTIONS (1), (2), (5), (6), (7) AND (8), TO CHANGE CERTAIN EXISTING SIGN REGULATIONS AND ADD PROVISIONS TO THE AFORESAID SUBSECTIONS REGULATING PROHIBITED SIGNS, PERMITTED SIGNS, CONSTRUCTION SIGNS, SIGN DESIGN REQUIREMENTS, SIGN ILLUMINATION REQUIREMENTS, AND NON-CONFORMING SIGNS; CREATING NEW SUBSECTION 78-70(p)(10) TO BE ENTITLED "ADMINISTRATIVE SIGN WAIVER PROCEDURE" WHICH DELEGATES CERTAIN POWERS AND DUTIES TO THE COMMUNITY DEVELOPMENT DIRECTOR TO GRANT SIGN WAIVERS UNDER LIMITED CIRCUMSTANCES; AMENDING TABLE 78-70-7 ENTITLED "PERMITTED SIGNS" TO CLARIFY RESTRICTIONS ON THE SIZE, NUMBER, AND COPY FOR SIGNS AND OTHER SIGNAGE RESTRICTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

I. **ORDINANCE ON FIRST READING:**

5. ORDINANCE NO. 01-2010 – Department of Justice Decree with the Town of Lake Park Limited Voting **Tab 5**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING THE TOWN CHARTER TO COMPLY WITH A CONSENT DECREE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA; AMENDING OF ARTICLE IV, SECTION 1, ENTITLED "ELECTED OFFICERS"; AMENDING ARTICLE XVI, SECTION 17, ENTITLED "RUN-OFF"; AMENDING ARTICLE XVI, SECTION 22, ENTITLED "FORM OF BALLOT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

J. **RESOLUTIONS:**

6. RESOLUTION NO. 02-01-10 – Street Lighting General Obligation Referendum Resolution **Tab 6**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS FOR THE PURPOSE OF FINANCING ALL OR A PORTION OF THE COSTS OF THE ACQUISITION AND INSTALLATION OF STREET LIGHTING TO BE OWNED BY THE TOWN OF LAKE PARK, FLORIDA IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING TWO MILLION FIVE HUNDRED THOUSAND DOLLARS ($2,500,000), CALLING FOR A BOND REFERENDUM OF THE QUALIFIED ELECTORS OF THE TOWN OF LAKE PARK TO BE HELD ON MARCH 9, 2010, AS TO WHETHER GENERAL OBLIGATION BONDS FOR SUCH STREET LIGHTING PROJECT SHOULD BE ISSUED; AND PROVIDING AN EFFECTIVE DATE.

K. **DISCUSSION AND POSSIBLE ACTION:**

7. Marina Paver Covering Options **Tab 7**

L. **COMMISSIONER COMMENTS, TOWN ATTORNEY, TOWN MANAGER:**

M. **ADJOURNMENT:**

Consent Agenda

TAB 1

Town of Lake Park Town Commission
Agenda Request Form

Meeting Date: January 6, 2010 | Agenda Item No. 1

[ ] PUBLIC HEARING
[ ] ORDINANCE ON FIRST READING
[ ] BID/RFP Award
[ ] GENERAL APPROVAL OF ITEM
[ ] Other: Grant Agreement

[✓] **RESOLUTION**
[ ] ORDINANCE ON SECOND READING
[ ] DISCUSSION
[✓] **CONSENT AGENDA**

SUBJECT: Grant agreement with Palm Beach County Housing & Community Development for Community Development Block Grant funds to improve West Ilex Park

RECOMMENDED MOTION/ACTION: Approve grant agreement

Approved by Town Manager Nylon **Date:** 12-23-2009

Virginia Martin, Grants Writer
Name/Title

December 23, 2009
Date of Actual Submittal

Originating Department: Grants	Costs: $ Funding Source: CDBG Acct. #	**Attachments:** Resolution Grant Agreement
Department Review: [ ] Community Affairs ____ [ ] Community Development ___ [✓] Finance PWMC 12/23/09	[ ] Fire Dept _____ [x] Grants ____ GM _____ [ ] Human Resources _____ [ ] Library _____ [ ] Marina _____	[ ] PBSO _____ [ ] Public Works _____ [✓] Town Attorney _____ [ ]Town Clerk _____ [✓] Town Manager _____
Advertised: Date: _____ Paper: _____ [✓] Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case GM _____: Please initial one.

Summary Explanation/Background: The Town of Lake Park has an Interlocal Agreement with Palm Beach County Housing and Community Development to write and obtain funding from the US Department of Housing and Urban Development for entitlement communities in Palm Beach County. Lake Park can use these funds for any qualified purpose to improve the community's qualify of life, neighborhoods, and housing stock. The Commission decided earlier in the year to use this year's allocation to improve West Ilex Park. This is the grant agreement to accept those funds and a Resolution to sign the agreement.

RESOLUTION NO. 01-01-10

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING ALL FUNDS ALLOCATED BY PALM BEACH COUNTY HOUSING AND COMMUNITY DEVELOPMENT TO THE TOWN OF LAKE PARK FROM COMMUNITY DEVELOPMENT BLOCK GRANT BE USED TOWARD RENOVATION OF WEST ILEX PARK.

WHEREAS, the Town of Lake Park ("Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town of Lake Park is an eligible entitlement community with a signed Interlocal Agreement with Palm Beach County; and

WHEREAS, the project benefits low and moderate income persons, one of the three categories of eligible activities as defined by HUD, and

WHEREAS, the West Ilex Park lies entirely within a public area that is used by and available to the entire community and the general public for recreation.

NOW, THEREFORE, BE IT RESOLVED by the Town Commission of the Town of Lake Park, Florida:

SECTION 1. The Town Commission authorizes and directs the Mayor to sign the grant agreement with Palm Beach County to obtain $73,054 in Community Development Block Grant funding for West Ilex Park;

SECTION 2. All funds derived from this grant will be used toward completion of the West Ilex Park renovations.

SECTION 3. This Resolution shall take effect immediately upon its adoption.

AGREEMENT BETWEEN PALM BEACH COUNTY

AND

TOWN OF LAKE PARK

THIS AGREEMENT, entered into this _____ day of_____, 20___, by and between Palm Beach County, a political subdivision of the State of Florida, for the use and benefit of its Community Development Block Grant Program, and the Town of Lake Park, a municipality duly organized and existing by virtue of the laws of the State of Florida, having its principal office at 535 Park Avenue, Lake Park, FL 33403.

WHEREAS, Palm Beach County has entered into an agreement with the United States Department of Housing and Urban Development for a grant for the execution and implementation of a Community Development Block Grant Program in certain areas of Palm Beach County, pursuant to Title I of the Housing and Community Development Act of 1974 (as amended); and

WHEREAS, Palm Beach County, in accord with the annual Action Plan, and the Town of Lake Park, desire to provide the activities specified in Part II of this Agreement; and

WHEREAS, Palm Beach County desires to engage the to implement such undertakings of the Community Development Block Grant Program.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed as follows:

PART I

DEFINITION AND PURPOSE

1. DEFINITIONS

(1) "County" means Palm Beach County.
(2) "CDBG" means the Community Development Block Grant Program of Palm Beach County.
(3) "HCD" means Palm Beach County Housing and Community Development.
(4) "Municipality" means the Town of Lake Park.
(5) "HCD Approval" means the written approval of the HCD Director or his designee.
(6) "U.S. HUD" means the Secretary of Housing and Urban Development or a person authorized to act on its behalf.
(7) "Low and moderate income persons" means the definition set by U.S. HUD.

2. PURPOSE

The purpose of this Agreement is to state the covenants and conditions under which the Municipality will implement the Scope of Services set forth in Part II of this Agreement.

PART II

SCOPE OF SERVICES

The Municipality shall, in a satisfactory and proper manner as determined by HCD, perform the tasks necessary to conduct the program outlined in Exhibit "A" as attached hereto and made a part hereof.

PART III

COMPENSATION, TIME OF PERFORMANCE, METHOD, AND CONDITIONS OF PAYMENT

1. MAXIMUM COMPENSATION

The Municipality agrees to accept as full payment for services rendered pursuant to this Agreement the actual amount of budgeted, eligible, and HCD Director or designee-approved expenditures and encumbrances made by the Municipality under this Agreement, which shall not be unreasonably withheld. Said services shall be performed in a manner satisfactory to HCD. In no event shall the total compensation or reimbursement to be paid hereunder exceed the maximum and total authorized sum of $73,054 for the period of February 2, 2010 through and including September 30, 2010 Any funds not obligated by the expiration date of this Agreement shall automatically revert to the County.

2. TIME OF PERFORMANCE

The effective date of this Agreement and all rights and duties designated hereunder are contingent upon the timely release of funds for this project by U. S. HUD under grant No. B-09-UC-12-0004. The effective date shall be the date of execution of this Agreement, and the services of the Municipality shall be undertaken and completed in light of the purposes of this Agreement. In any event, all services required hereunder shall be completed by the Municipality prior to September 30, 2010.

3. METHOD OF PAYMENT

The County agrees to make payments and to reimburse the Municipality for all budgeted costs permitted by Federal, State, and County guidelines. The Municipality shall not request reimbursement for payments made by the Municipality before the effective date of this Agreement, nor shall it request reimbursement for payments made after the expiration date of this Agreement, and in no event shall the County provide advance funding to the Municipality or any subcontractors hereunder. The Municipality shall request payments or reimbursements from the County by submitting to HCD proper documentation of expenditures consisting of originals of invoices, receipts, or other evidence of indebtedness, and when original documents cannot be presented, the Municipality may furnish copies if deemed acceptable by HCD. Each request for payment or reimbursement submitted by the Municipality shall be accompanied by a letter from the Municipality, provided on the Municipality's letterhead, referencing the name of the project funded herein, the date of this Agreement and/or its document number, and containing a statement requesting the payment or reimbursement and its amount, as well as the name and signature of the person making the request. Payment shall be made by the Palm Beach County Finance Department upon presentation of the aforesaid proper documentation of expenditures as approved by HCD. The Municipality may at any time after the expiration of this agreement request from the County reimbursement for payments made by the Municipality during the term of this Agreement by submitting to HCD the aforesaid proper documentation of expenditures, and the Palm Beach County Finance Department shall make payment as stated above, provided that HCD has determined that the funds allocated to the Municipality through this agreement are still available for payment, and provided that HCD approves such payment.

4. CONDITIONS ON WHICH PAYMENT IS CONTINGENT

(1) IMPLEMENTATION OF PROJECT ACCORDING TO REQUIRED PROCEDURES

The Municipality shall implement this Agreement in accordance with applicable Federal, State, County, and local laws, ordinances and codes and with the procedures outlined in HCD Policies and Procedures memoranda. The Federal, State, and County laws, ordinances and codes are minimal regulations supplemented by more restrictive guidelines set forth by HCD. No payments for projects funded by more than one funding source will be made until a cost allocation plan has been approved by the HCD Director or designee. Should a project receive additional funding after the commencement of this Agreement, the Municipality shall notify HCD in writing within thirty (30) days of receiving notification from the funding source and submit a cost allocation plan for approval by the HCD Director or designee within forty-five (45) days of said official notification.

(2) FINANCIAL ACCOUNTABILITY

The County may have a financial systems analysis and/or an audit of the Municipality, or of any of its subcontractors, by an independent auditing firm employed by the County or by the County Internal Audit Department at any time the County deems necessary to determine if the project is being managed in accordance with Federal, State, and County requirements.

(3) SUBCONTRACTS

Any work or services subcontracted hereunder shall be specifically by written contract, written agreement, or purchase order. All subcontracts shall be submitted by the Municipality to HCD and approved by HCD prior to execution of any subcontract hereunder. All subcontracts shall be subject to Federal, State and County laws and regulations. This includes ensuring that all consultant contracts and fee schedules meet the minimum standards as established by the Palm Beach County Engineering Department and U.S. HUD. Contracts for architecture, engineering, survey, and planning shall be fixed fee contracts.

All additional services shall have prior written approval with support documentation detailing categories of persons performing work plus hourly rates including benefits, number of drawings required, and all items that justify the "Fixed Fee Contract." Reimbursables will be at cost. None of the work or services covered by this Agreement, including, but not limited to, consultant work or services, shall be subcontracted or reimbursed without prior written approval of the HCD Director or his designee.

(4) PURCHASING

All purchasing for services and goods, including capital equipment, shall be made by purchase order or by a written contract and in conformity with the procedures prescribed by the Palm Beach County Purchasing Code, as well as Federal Management Circulars A-87, A-102, A-128, and 24CFR Part 85 (also known as the Common Rule), which are incorporated herein by reference.

(5) REPORTS, AUDITS, AND EVALUATIONS

Payment will be contingent on the timely receipt of complete and accurate reports required by this Agreement, and on the resolution of monitoring or audit findings identified pursuant to this Agreement.

(6) ADDITIONAL HCD, COUNTY, AND U.S. HUD REQUIREMENTS

HCD shall have the right under this Agreement to suspend or terminate payments if after 15 days written notice the Municipality has not complied with any additional conditions that may be imposed, at any time, by HCD, the County, or U.S. HUD.

(7) PRIOR WRITTEN APPROVALS-SUMMARY

The following activities among others require the prior written approval of the HCD Director or designee to be eligible for reimbursement or payment:

(a) All subcontracts and agreements pursuant to this Agreement;
(b) All capital equipment expenditures of $1,000 or more;
(c) All out-of-county travel; (travel shall be reimbursed in accordance with Florida Statutes, Chapter 112.061);
(d) All change orders;
(e) All requests to utilize uncommitted funds after the expiration of this Agreement for programs described in Exhibit A; and
(f) All rates of pay and pay increases paid out of CDBG funds, whether for merit or cost of living.

(8) PROGRAM-GENERATED INCOME

All income earned by the Municipality from activities financed in whole or in part by funds provided hereunder must be reported to HCD. Such income would include, but not be limited to, income from service fees, sale of commodities, and rental or usage fees. Such income shall only be used to undertake the activities authorized by this Agreement. Accounting and disbursement of such income shall comply with OMB Circular A-110 and other applicable regulations incorporated herein by reference.

PART IV

GENERAL CONDITIONS

1. OPPORTUNITIES FOR RESIDENTS AND CIVIL RIGHTS COMPLIANCE

The Municipality agrees that no person shall on the ground of race, color, disability, national origin, religion, age, financial status, familial status, marital status, sexual orientation, gender, or gender identity or expression, be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of this Agreement. Upon receipt of evidence of such discrimination, the County shall have the right to terminate this Agreement.

To the greatest extent feasible, lower-income residents of the project areas shall be given opportunities for training and employment; and to the greatest feasible extent eligible business concerns located in or owned in substantial part by persons residing in the project areas shall be awarded contracts in connection with the project. The Municipality shall comply with the Section 3 Clause of the Housing and Community Development Act of 1968.

2. OPPORTUNITIES FOR SMALL AND MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES

In the procurement of supplies, equipment, construction, or services to implement this Agreement, the Municipality shall make a positive effort to utilize small business and minority/women-owned business enterprises of supplies and services, and provide these sources the maximum feasible opportunity to compete for contracts to be performed pursuant to this Agreement. To the maximum extent feasible these small business and minority/women-owned business enterprises shall be located in or owned by residents of the CDBG areas designated by Palm Beach County in the CDBG Annual Consolidated Plan approved by U.S. HUD.

3. PROGRAM BENEFICIARIES

At least fifty-one percent (51%) of the beneficiaries of a project funded through this Agreement must be low- and moderate- income persons. If the project is located in an entitlement city, as defined by U.S. HUD, or serves beneficiaries countywide, at least fifty-one percent (51%) of the beneficiaries directly assisted through the use of funds under this Agreement must reside in unincorporated Palm Beach County or in municipalities participating in the County's Urban County Qualification Program. The project funded under this Agreement shall assist beneficiaries as defined above for the time period designated in this Agreement. The Municipality shall provide written verification of compliance to HCD upon HCD's request.

4. EVALUATION AND MONITORING

The Municipality agrees that HCD will carry out periodic monitoring and evaluation activities as determined necessary by HCD or the County and that payment, reimbursement, or the continuation of this Agreement is dependent upon satisfactory evaluation conclusions based on the terms of this Agreement. The Municipality agrees to furnish upon request to HCD, the County, or the County's designees copies of transcriptions of such records and information as is determined necessary by HCD or the County. The Municipality shall submit status reports required under this Agreement on forms approved by HCD to enable HCD to evaluate progress. The Municipality shall provide information as requested by HCD to enable HCD to complete reports required by the County or HUD. The Municipality shall allow HCD, the County, or HUD to monitor the Municipality on site. Such visits may be scheduled or unscheduled as determined by HCD or HUD.

5. AUDITS AND INSPECTIONS

At any time during normal business hours and as often as HCD, the County, U.S. HUD, or the Comptroller General of the United States may deem necessary, there shall be made available by the Municipality to HCD, the County, U.S. HUD, or the Comptroller General for examination all its records with respect to all matters covered by this Agreement.

If during the year, the Municipality expends over $500,000 of Federal awards, the Municipality shall comply with the provisions of OMB Circular A-133. The Municipality shall submit a single audit, including any management letter, made in accordance with the general program requirements of OMB Circulars A-110, A-122, A-133, and other applicable regulations within the earlier of, 30 days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period in which HCD-administered funds are expended. Said audit shall be made by a Certified Public Accountant of the Municipality's choosing, subject to the County's approval. In the event the Municipality anticipates a delay in producing such audit, the Municipality shall request an extension in advance of the deadline. The cost of said audit shall be borne by the Municipality. In the event the Municipality is exempt from having an audit conducted under A-133, the Municipality shall submit audited financial statements and/or the County reserves the right to conduct a "limited scope audit" of the Municipality as defined by A-133. The County will be responsible for providing technical assistance to the Municipality, as deemed necessary by the County.

6. UNIFORM ADMINISTRATIVE REQUIREMENTS
The Municipality agrees to comply with the applicable uniform administrative requirements as described in Federal Community Development Block Grant Regulations 24 CFR 570.502.

7. REVERSION OF ASSETS
Upon expiration of this Agreement, the Municipality shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the Municipality's control upon expiration of this Agreement which was acquired or improved in whole or part with CDBG in the excess of $25,000 must either be used to meet one of the national objectives in Federal Community Development Block Grant Regulations 24 CFR 570.508 for a period of five years after expiration of this Agreement (unless a longer period is specified elsewhere in this Agreement), or, the Municipality shall pay the County an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

8. DATA BECOMES COUNTY PROPERTY
All reports, plans, surveys, information, documents, maps, and other data procedures developed, prepared, assembled, or completed by the Municipality for the purpose of this Agreement shall be made available to the County by the Municipality at any time upon request by the County or HCD. Upon completion of all work contemplated under this Agreement copies of all documents and records relating to this Agreement shall be surrendered to HCD if requested. In any event the Municipality shall keep all documents and records for five (5) years after expiration of this Agreement.

9. INDEMNIFICATION
Each party to this Agreement shall be liable for its own actions and negligence and, to the extent permitted by law, the County shall indemnify, defend, and hold harmless the Municipality against any actions, claims, or damages arising out of the County's negligence in connection with this Agreement, and the Municipality shall indemnify, defend, and hold harmless the County against any actions, claims, or damages arising out of the Municipality's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statute, section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions. The Municipality shall hold the County harmless and shall indemnify the County for funds which the County is obligated to refund the Federal Government arising out of the conduct of activities and administration of the Municipality. The provisions of this indemnification clause shall survive the termination of this Agreement.

10. INSURANCE
Without waiving the right to sovereign immunity as provided by Florida Statute, Chapter 768.28, the Municipality reserves the right to self-insure for General Liability and Automobile Liability under Florida's sovereign immunity statute with coverage limits of $100,000 Per Person and $200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event the Municipality maintains Commercial General Liability or Business Auto Liability, the Municipality agrees to maintain said insurance policies at limits not less than $100,000 Per Person and $200,000 Per Occurrence. The Municipality agrees to endorse Palm Beach County Board of County Commissioners as an "Additional Insured" to the Commercial General Liability, but only with respect to negligence other than County's negligence arising out of this project or Agreement. **This paragraph does not apply to liability policies which afford only indemnity based claims-bill coverage.**

The Municipality agrees to maintain, or self-insure, Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute, Chapter 440.

The Municipality agrees to provide a statement, or Certificate of Insurance, evidencing insurance or self-insurance for the above required coverages, which the Municipality shall deliver to HCD at its office at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.

The Municipality agrees its self-insurance or insurance shall be primary as respects to any coverage afforded to or maintained by County.

The Municipality agrees compliance with the foregoing insurance requirements is not intended to nor construed to relieve the Municipality of its liability and obligations under this Agreement.

11. MAINTENANCE OF EFFORT
The intent and purpose of this Agreement is to increase the availability of the Municipality's services. This Agreement is not to substitute for or replace existing or planned projects or activities of the Municipality. The Municipality agrees to maintain a level of activities and expenditures, planned or existing, for projects similar to those being assisted under this Agreement which is not less than that level existing prior to this Agreement.

12. CONFLICT OF INTEREST
The Municipality covenants that no person who presently exercises any functions or responsibilities in connection with the Project, has any personal financial interest, direct or indirect, in the target areas or any parcels therein, which would conflict in any manner or degree with the performance of this Agreement and that no person having any conflict of interest shall be employed by or subcontracted by the Municipality. Any possible conflict of interest on the part of the Municipality or its employees shall be disclosed in writing to HCD provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation of low and moderate-income residents of the project area.

13. CITIZEN PARTICIPATION
The Municipality shall cooperate with HCD in the implementation of the Citizen Participation Plan by establishing a citizen participation process to keep residents informed of the activities the Municipality is undertaking in carrying out the provisions of this Agreement. Representatives of the Municipality shall attend meetings and assist HCD in the implementation of the Citizen Participation Plan, as requested by HCD.

14. RECOGNITION
All facilities purchased or constructed pursuant to this Agreement shall be clearly identified as to funding source. The Municipality will include a reference to the financial support herein provided by HCD in all publications and publicity. In addition, the Municipality will make a good faith effort to recognize HCD's support for all activities made possible with funds made available under this Agreement.

15. AGREEMENT DOCUMENTS
The following documents are herein incorporated by reference and made a part hereof, and shall constitute and be referred to as the Agreement; and all of said documents taken as a whole constitute the Agreement between the parties hereto and are as fully a part of the Agreement as if they were set forth verbatim and at length herein:
(1) This Agreement, including its Exhibits;
(2) Office of Management and Budget Circulars A-87, A-102, A-133, and 24CFR Part 85;
(3) Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990;
(4) Executive Orders 11246, 11478, 11625, 12432, the Davis Bacon Act, and Section 3 of the Housing and Community Development Act of 1968, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;
(5) Executive Orders 11063, 12259, 12892, the Fair Housing Act of 1988, and Section 109 of the Housing and Community Development Act of 1974, as amended;
(6) Florida Statutes, Chapter 112;
(7) Palm Beach County Purchasing Code;
(8) Federal Community Development Block Grant Regulations (24 CFR Part 570), and Federal Consolidated Plan Regulations (24 CFR Part 91), as amended;
(9) The Municipality's personnel policies and job descriptions; and
(10) The Municipality's Certificate of Insurance.
All of these documents will be maintained on file at HCD. The Municipality shall keep an original of this Agreement, including its Exhibits, and all amendments thereto, on file at its principal office.

16. TERMINATION
In event of termination for any of the following reasons, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports prepared, and capital equipment secured by the Municipality with funds under this Agreement shall be returned to HCD or the County.
In the event of termination, the Municipality shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Municipality, and the County may withhold any payment to the Municipality for set-off purposes until such time as the exact amount of damages due to the County from the Municipality is determined.

(1) TERMINATION FOR CAUSE
If through any cause either party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if either party shall violate any of the covenants, agreements, or stipulations of this Agreement, either party shall thereupon have the right to terminate this Agreement in whole or part by giving a fifteen (15) working day written notice of such termination to the other party and specifying therein the effective date of termination.

(2) TERMINATION FOR CONVENIENCE
At any time during the term of this Agreement, either party may, at its option and for any reason, terminate this Agreement upon ten (10) working days written notice to the other party. Upon termination, the County shall pay the Municipality for services rendered pursuant to this Agreement through and including the date of termination.

(3) TERMINATION DUE TO CESSATION
In the event the grant to the County under Title I of the Housing and Community Development Act of 1974 (as amended) is suspended or terminated, this Agreement shall be suspended or terminated effective on the date the U.S. HUD specifies.

17. SEVERABILITY OF PROVISIONS
If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

18. AMENDMENTS
The County may, at its discretion, amend this Agreement to conform with changes required by Federal, State, County, or U.S. HUD guidelines, directives, and objectives. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Palm Beach County Board of County Commissioners. Except as otherwise provided herein, no amendment to this Agreement shall be binding on either party unless in writing, approved by the Board of County Commissioners and the governing body of the Municipality, and signed by both parties.

19. NOTICES
All notices required to be given under this Agreement shall be sufficient when delivered to HCD at its office at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406, and to the Municipality when delivered to its address on page one (1) of this Agreement.

20. INDEPENDENT AGENT AND EMPLOYEES
The Municipality agrees that, in all matters relating to this Agreement, it will be acting as an independent agent and that its employees are not Palm Beach County employees and are not subject to the County provisions of the law applicable to County employees relative to employment, hours of work, rates of compensation, leave, unemployment compensation and employee benefits.

21. NO FORFEITURE
The rights of the County under this Agreement shall be cumulative and failure on the part of the County to exercise promptly any rights given hereunder shall not operate to forfeit or waive any of the said rights.

22. PUBLIC ENTITY CRIMES
As provided in F.S. 287.133 by entering into this Agreement or performing any work in furtherance hereof, the Municipality certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3)(a).

23. COUNTERPARTS OF THE AGREEMENT
This Agreement, consisting of sixteen (16) enumerated pages which include the exhibits referenced herein, shall be executed in three (3) counterparts, each of which shall be deemed to be an original, and such counterparts will constitute one and the same instrument. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

24. ENTIRE UNDERSTANDING
This Agreement and its provisions merge any prior agreements, if any, between the parties hereto and constitutes the entire understanding. The parties hereby acknowledge that there have been and are no representations, warranties, covenants, or undertakings other than those expressly set forth herein.

WITNESS our Hands and Seals on this _____ day of _____, 20____.

(MUNICIPALITY SEAL BELOW)

TOWN OF LAKE PARK

BY:_____
Desca DuBois, Mayor

By:_____
Vivian Mendez Lemley, Town Clerk

BY:_____
Attorney for Municipality
(Signature Optional)

(COUNTY SEAL BELOW)

PALM BEACH COUNTY, FLORIDA, a Political Subdivision of the State of Florida

BOARD OF COUNTY COMMISSIONERS

By:_____
Burt Aaronson, Chair
Board of County Commissioners

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By:_____
Deputy Clerk

Document No.:_____

Approved as to Form and
Legal Sufficiency

By:_____
Tammy K. Fields
Senior Assistant County Attorney

Approved as to Terms and Conditions
Dept. of Housing and Community Development

By:_____
Amin Houry, Manager
Housing and Capital Improvements

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EXHIBIT A
WORK PROGRAM NARRATIVE

I. THE MUNICIPALITY AGREES TO:

A. PROFESSIONAL SERVICES: The Municipality shall, at it's own expense, retain the services of an architectural/landscape architectural consultant for this project to provide design services to create plans and specifications for the below described park improvement project located at West Ilex Park in the Town of Lake Park. The consultant shall also prepare, obtain and review bids, prepare contract documents, inspect work in progress, recommend payment to contractors. The consultant shall also coordinate the design and construction work with the asbestos abatement contractor, should such abatement become necessary.

B. PROJECT SCOPE : The scope of this project subject to funding availability shall include the following: The purchase and installation of playground equipment, as well as landscaping, pavers, sidewalks, benches, a bike rack and irrigation modifications at West Ilex Park in the Town of Lake Park.

NOTE 1: The benches and bike rack must be permanently installed by permanently attaching to a concrete slab.

NOTE 2: The Municipality shall submit its bid package/drawings/specifications, and an itemized opinion of probable construction cost prepared by its consultant, to HCD and obtain a letter of approval prior to bidding the construction work. Furthermore, the Municipality shall obtain HCD approval prior to issuing any addenda to its bid documents for this project.

NOTE 3: The Municipality shall prioritize the work in the project, and shall bid such work in a manner that would allow the receipt of itemized costs from bidders which would then allow the award of items that can be funded by the budget provided that the extent of work awarded will result in a functioning facility in the opinion of HCD.

NOTE 4: The Municipality shall include in its bid and contract documents the following prohibition affecting the prime contractor and all subcontractors for this project: "Neither the prime contractor nor any subcontractor shall be allowed to perform one hundred percent (100%) of their work on this project on nights, weekends, or County recognized holidays. The prime contractor and all subcontractors shall, at a minimum, perform work on this project for the duration of one regular working day". The Municipality may request HCD for a waiver to the above requirement should the nature of the project so necessitate, and in such instance, HCD may, at its discretion, grant the Municipality such waiver.

NOTE 5: The Municipality shall not award the construction contract for the project until sufficient funding is available to complete the established scope of work. All construction work shall be included in one contract. The Municipality shall obtain HCD approval prior to awarding the construction contract to be funded through this Agreement. After awarding such contract, the Municipality shall obtain HCD approval prior to executing any change orders to such contract.

NOTE 6: Should the construction contract amount for this project exceed the amount to be funded by the County for construction costs through this Agreement, then the Municipality shall fund all amounts in excess of the amount to be funded by the County. The Municipality may request the County to participate with a portion of the County's funding for construction costs first prior to participating with its funds. Under such a scenario, the Municipality would disburse an amount up to 75%of the County's funding amount made available for the project through this Agreement for construction costs and request reimbursement from the County for such amount, then disburse its portion of funding for the project (without being reimbursed by the County for such amount), and finally, the Municipality would disburse an amount equivalent to the County's remaining funding amount made available for the project through this Agreement for construction costs and request reimbursement from the County for such amount.

NOTE 7: The Municipality shall not request reimbursement from HCD for materials or equipment received and stored on the project site or elsewhere. The Municipality shall only request reimbursement for materials and equipment that have been installed.

The Municipality further agrees that HCD, in consultation with any parties it deems necessary, shall be the final arbiter on the Municipality's compliance with the above.

C. ASBESTOS REQUIREMENTS: The Municipality shall comply with all applicable requirements contained in Exhibit C, attached hereto, for construction work in connection with the project funded through this Agreement.

D. DAVIS-BACON ACT: The Municipality shall request the County to obtain a Davis-Bacon wage decision for the project prior to advertising the construction work. The Municipality shall incorporate a copy of the Davis-Bacon wage decision and disclose the requirements of the Davis-Bacon Act in its construction bid solicitation and contract.

E. BONDING REQUIREMENTS: The Municipality shall comply with the requirements of 24CFR Part 85 in regard to bid guarantees, performance bonds, and payment bonds.

F. CONSTRUCTION PAYMENT RETAINAGE: The Municipality shall apply a retainage of at least 5% on all construction draws which retainages shall be released in conjunction with the final draw upon satisfactory completion of the project. The Municipality agrees not to release such retainages until it has obtained approval from the County that the contractor and subcontractors have complied with the requirements of the Davis-Bacon Act.

G. FORMER PROJECTS: The Municipality shall maintain all previously completed CDBG funded projects. Failure to do so will result in forfeiture of future CDBG funds and will delay funding for ongoing activities.

H. WORK SCHEDULE: The time frame for completion of the outlined activities shall be September 30, 2010.

Complete Design & Bid Documents by	Mar 1, 2010
Advertise & Accept Bids by	Apr 1, 2010
Award Contract by	Apr 30, 2010
Start Construction by	May 15, 2010
Complete Construction by	Sep 15, 2010
Submit Final Reimbursement Request by	Sep 30, 2010

I. REPORTS: The Municipality shall submit to HCD detailed monthly progress reports in the form provided as Exhibit B to this Agreement. Each report must account for the total activity for which the Municipality is funded under this Agreement. The progress reports shall be used by HCD to assess the Municipality's progress in implementing the project.

J. USE OF THE PROJECT FACILITY: The Municipality agrees in regard to the use of the facility/property whose acquisition or improvements are being funded in part or in whole by CDBG funds as provided by this Agreement, that for a period of ten (10) years after the expiration date of this Agreement (as may be amended from time to time):

(a) The Municipality may not change the use or planned use, or discontinue use, of the facility/property (including the beneficiaries of such use) from that for which the acquisition or improvements are made, unless the Municipality provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change and either:

1. The new use of the facility/property qualifies as meeting one of the national objectives defined in the regulations governing the CDBG program, and is not a building for the general conduct of government; or
2. The requirements of paragraph (b) of this section are met.

(b) If the Municipality determines after consultation with affected citizens, that it is appropriate to change the use of the facility/property to a use which does not qualify under paragraph (a) (1) of this section or discontinue the use of the facility/property, it may retain or dispose of the facility for such use if the County is reimbursed in the amount of the current fair market value of the facility/property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvements to the facility/property. The final determination of the amount of any such reimbursement to the County under this paragraph shall be made by the County.

(c) Following the reimbursement of CDBG funds by the Municipality to the County pursuant to paragraph (b) above, the facility/property will then no longer be subject to any CDBG requirements.

The provisions of this clause shall survive the expiration of this Agreement.

K. SECTION 3 REQUIREMENTS: The Municipality agrees to comply with all Section 3 requirements applicable to contracts funded through this Agreement. Information on Section 3 is available at HCD upon request. The Municipality shall include the following, referred to as the Section 3 Clause, in every solicitation and every contract for every Section 3 covered project:

Section 3 Clause

(a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U. S.C. 170 1u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's requirements in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractor's commitment under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

II. **THE COUNTY AGREES TO:**

A. Provide funding for the above specified improvements as described above in "Project Scope", during the term of this Agreement, in the amount of $73,054. However, the County shall not provide any funding for the construction work until the Municipality provides documentation showing that sufficient funds are available to complete the project.

B. Provide project administration and inspection to the Municipality to ensure compliance with U.S. HUD and the Department of Labor, and applicable State, Federal and County laws and regulations.

C. Monitor the Municipality at any time during the term of this Agreement. Visits may be announced or unannounced as determined by HCD and will serve to ensure compliance with U.S. Department of HUD regulations, that planned activities are conducted in a timely manner, and to verify the accuracy of reporting to HCD on program activities.

D. The County shall perform an environmental review of the project, and review and approve project design and bids submitted for the work. The County shall also perform Davis Bacon Act Labor Standards monitoring and enforcement. Environmental review costs incurred by the County may be charged to the project budget identified above.

E. Allowable costs that may be paid by the County under this Agreement in addition to those stated in II.A above:

(a) Costs of asbestos surveys, asbestos abatement, and abatement monitoring.
(b) Costs of any other services customarily associated with projects of the nature of the project contemplated by this Agreement.

The County shall review requests by the Municipality for expenditures on the above items prior to undertaking the services associated with them, and approve any such expenditures it deems appropriate for this project.

EXHIBIT B

PALM BEACH COUNTY **HOUSING & COMMUNITY DEVELOPMENT**

MONTHLY NARRATIVE REPORT

Report For:	Month: _____ Year: _____
Subrecipient Name:	Town of Lake Park
Project Name:	West Ilex Park
Report Prepared By:	_____ _____ Name Signature Date

BUDGETING AND EXPENDITURES

Amounts Expended this Reporting Period: CDBG Funds:$_____ Other Funds:$_____

Amounts Expended to Date:

//////////////////////////////////////	BUDGETED	EXPENDED	PERCENTAGE
CDBG Funds:	$	$	%
Other Funds:_____	$	$	%
Other Funds:_____	$	$	%
TOTAL:	$	$	%

Describe any changes in budgeted amounts during this reporting period and the source of funds:

_____

Describe your efforts to obtain any additional funds for the project during this reporting period (if your project is underfunded): _____

PROJECT ACTIVITIES

Describe your accomplishments during the reporting period: _____

Describe any problems encountered during this reporting period: _____

Other comments: _____

Send report to: **Amin Houry**
Department fo Housing and Community Development
100 Australian Avenue, Suite 500, West Palm Beach, FL 33406

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EXHIBIT C

ASBESTOS REQUIREMENTS
SPECIAL CONDITIONS FOR DEMOLITION AND RENOVATION OF BUILDINGS

The provisions of this part apply to all demolition and renovation work contemplated in this Agreement and described in Exhibit A of this Agreement.

I. DEFINITIONS

ACBM: Asbestos Containing Building Materials
AHERA: Asbestos Hazard Emergency Response Act
EPA: Environmental Protection Agency
FLAC: Florida Licensed Asbestos Consultant
HCD: Palm Beach County Department of Housing and Community Development
NESHAP: National Emission Standards for Hazardous Air Pollutants
NRCA: National Roofing Contractors Association
NVLAP: National Voluntary Laboratory Accreditation Program
OSHA: Occupational Health and Safety Administration
PBCAC: Palm Beach County Asbestos Coordinator (in Risk Management)
TEM: transmission electron microscopy

II. ASBESTOS SURVEYS

All properties scheduled for renovation or demolition are required to have a comprehensive asbestos survey conducted by a Florida Licensed Asbestos Consultant ,(FLAC). The survey shall be conducted in accordance with AHERA guidelines. Analysis must be performed by a NVLAP accredited laboratory.

For Renovation Projects (projects which will be reoccupied):

- Point counting must be done for all asbestos containing building materials (ACBM) indicating less than 1% asbestos (to determine if any asbestos is present).
- Samples of vinyl floor tile indicating asbestos not detected must be confirmed by transmission electron microscopy (TEM).
- Joint compound shall be analyzed as a separate layer.
- Roofing material shall be sampled only if a renovation requires the roof to be disturbed (in lieu of sampling the roof, it may be presumed to contain asbestos).

For Demolition Projects:

- Point counting must be done for all "friable" asbestos containing building materials (ACBM), indicating less than 1% asbestos. This includes joint compounds (to be analyzed as a separate layer), and vinyl asbestos tile.
- Roof materials shall be presumed to be asbestos containing.

If the Municipality has a recent asbestos survey report prepared by a licensed asbestos consultant, a copy may be provided to HCD and PBCAC for review to determine if the survey is adequate to proceed with renovation/demolition work. If no survey is available, a survey may be initiated by the Municipality or requested by HCD. A copy of the completed survey will be forwarded to the Municipality. All asbestos survey's shall be forwarded to the PBCAC.

III. ASBESTOS ABATEMENT

A. RENOVATION

(a) Prior to a renovation, all asbestos containing materials that will be disturbed during the renovation, must be removed by a Florida Licensed Asbestos Contractor under the direction of a FLAC. Exceptions may be granted by HCD prior to the removal, (such as asbestos containing roofs, transite pipe). The Municipality must obtain approval for all exceptions from HCD. HCD will request the PBCAC to review and approve all exceptions.

(b) Asbestos Abatement work may be contracted by the Municipality or by HCD upon request.

(c) If the Municipality contracts the asbestos abatement, the following documents are required to be provided to the HCD and the PBCAC.

1. An Asbestos Abatement Specification (Work Plan), sealed by an FLAC.
2. Pre and Post Job submittals, reviewed and signed by the FLAC.

(d) If the Municipality requests HCD to contract the asbestos abatement, HCD will initiate the request through the PBCAC who will contract the asbestos abatement. HCD will provide a copy of all contractor and consultant documents to the Municipality.

(e) Materials containing <1% asbestos are not regulated by EPA/NESHAPS. However, OSHA compliance is mandatory. OSHA requirements including training, wet methods, prompt cleanup in leak tight containers, etc. The renovation contractor must comply with US Dept of Labor, Standard Interpretation (OSHA), Compliance requirements for renovation work involving material containing <1% asbestos, 11/24/2003. The renovation contractor must submit a work plan to HCD and the PBCAC prior to removal of the materials.

B. DEMOLITION

All "friable" ACBM must be removed by a Florida Licensed Asbestos Contractor under the direction of a FLAC prior to demolition. Friable materials include: resilient asbestos tile and mastic which is not intact, linoleum, asbestos containing joint compound, asbestos containing cement panels (e.g. transite), etc.

Intact resilient tile and asbestos roof materials may be demolished with adequate controls (e.g. wet method) by a demolition contractor provided the contractor is aware of the asbestos containing materials present and exercises adequate control techniques (wet methods, etc.). In all cases, demolition work should be monitored by a FLAC to insure proper control measures and waste disposal. Any exceptions to these guidelines may be requested through HCD prior to the removal, (such as asbestos containing roofs, transite pipe). Exceptions may be granted by HCD prior to the removal, (i.e. asbestos containing roofs, transite pipe). The Municipality must obtain approval for all exceptions from HCD and the PBCAC.

(a) Asbestos Abatement work may be contracted by the Municipality or by HCD upon request.

(b) If the Municipality contracts the asbestos abatement, the following documents must be provided to the PBC/HCD and reviewed by the PBCAC.

1. An Asbestos Abatement Specification (Work Plan), sealed by an FLAC.
2. Pre and Post Job submittals, reviewed and signed by the FLAC.

(c) If the Municipality requests HCD to contract the asbestos abatement, HCD will initiate the request through the PBCAC who will contract the asbestos abatement. HCD will provide a copy of all contractor and consultant documents to the Municipality.

(d) Recycling, salvage or compacting of any asbestos containing materials or the substrate is strictly prohibited.

(e) In all cases, compliance with OSHA "Requirements for demolition operations involving material containing <1% asbestos is mandatory.

(f) For all demolitions involving asbestos containing floor tile, asbestos containing roofing material and materials containing <1%, the Demolition Contractor shall submit the following documents to HCD. HCD will provide a copy of these documents to PBCAC.

1. Signed statement that the demolition contractor has read and understood the requirements for complying with EPA, OSHA and the State of Florida Licensing regulations for demolition of structures with asbestos materials.
2. Submit a plan for the demolition of asbestos containing roofing and floor tile. State if these materials are likely to remain intact. Include in the plan what shall occur if materials become "not intact".
3. Submit a plan for compliance with OSHA requirements such as but not limited to: competent person, establishing a regulated area, asbestos training of workers, respiratory protection, use of disposable suits, air monitoring, segregation of waste, containerizing asbestos waste, waste disposal.

(g) If materials are discovered that are suspect asbestos materials that were not previously sampled, stop all work that will disturb these materials and immediately notify HCD.

IV. NESHAPS NOTIFICATION

A. RENOVATION

A NESHAP form must be received by the Palm Beach County Health Department at least ten working days prior to an asbestos renovation that includes regulated asbestos containing material greater than 160 square feet or 260 linear feet or 35 cubic feet. For lesser quantities, the Municipality (or its contractor) shall provide a courtesy notification to the Palm Beach County Health Department at least ten working days prior to an asbestos renovation. The removal of vinyl asbestos floor tile and linoleum shall be considered regulated. Asbestos roof removal requires a notification at least 3 working days prior to the removal.

B. DEMOLITION

A NESHAP form must be received by the Palm Beach County Health Department at least ten working days prior to the demolition.

C. The NESHAP notification shall be sent return receipt requested to the address shown below with a copy to HCD. HCD shall provide a copy to the PBCAC. All fees shall be paid by the Municipality.

Palm Beach County Department of Health
Asbestos Coordinator
901 Evernia Street
Post Office Box 29
West Palm Beach, Florida 33401

V. APPLICABLE ASBESTOS REGULATIONS/GUIDELINES

The Municipality, through its demolition or renovation contractor, shall comply with the following asbestos regulations/guidelines. This list is *not* all inclusive:

(a) Environmental Protection Agency (EPA) NESHAP, 40 CFR Parts 61 Subpart M – National Emission standard for Asbestos, revised July 1991

(b) Occupational Health and Safety Administration (OSHA) Construction Industry Standard, 29 CFR 1926.1101

(c) EPA: A Guide to Normal Demolition Practices Under the Asbestos NESHAP, September 1992

(d) Demolition practices under the Asbestos NESHAP, EPA Region IV

(e) Asbestos NESHAP Adequately Wet Guidance

(f) Florida State Licensing and Asbestos Laws
1. Title XVIII, Chapter 255, Public property and publicly owned buildings.
2. Department of Business and Professional Regulations, Chapter 469 Florida Statute, Licensure of Asbestos Consultants and Contractors

(g) Resilient Floor Covering Institute, NRCI, Updated Recommended Work Practices and Asbestos Regulatory Requirements, September 1998.

(h) Florida Roofing Sheet Metal and Air Conditioning Contractors Association, NRCA, June 1995

(i) US Dept of Labor, Standard Interpretation (OSHA)
1. Application of the asbestos standard to demolition of buildings with ACM in Place,8/26/2002.
2. Requirements for demolition operations involving material containing <1% asbestos, 8/13/1999.
3. Compliance requirements for renovation work involving material containing <1% asbestos, 11/24/2003.

TAB 2

Town of Lake Park Town Commission
Agenda Request Form

Meeting Date: **January 6, 2010** **Agenda Item No.** 2

[ ]	PUBLIC HEARING	[ ]	RESOLUTION
[ ]	ORDINANCE ON SECOND READING	[ ]	DISCUSSION
[ ]	ORDINANCE ON FIRST READING	[ ]	BID/RFP AWARD
[ ]	GENERAL APPROVAL OF ITEM	**[X]**	**CONSENT AGENDA**
[ ]	Other:		

SUBJECT: **Supervisor of Elections Agreement for Vote Processing Equipment Use and Election Services**

RECOMMENDED MOTION/ACTION: **Approval**

Approved by Town Manager _____ **Date:** 12.29.09

Vivian Lemley — Name/Title

for mailing December 28, 2009 — Date of Actual Submittal

Originating Department: **Town Clerk**	Costs: $ Funding Source: Acct. #	**Attachments:** Contract Exhibits A & B Projected Budget by Clerk
Department Review: [ ] Attorney_____ [ ] Community Development___ [ ] Finance _____ [ ] Fire Dept _____	[ ] Grants _____ [ ] Human Resources_____ [ ] Library _____ [ ] Marina _____ [ ] PBSO _____	[ ] Public Works_____ [ ] Recreation _____ **[X] Town Clerk** *VML* [ ] Town Manager _____
Advertised: Date: _____ Paper: _____ [ ] Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone_____ or Not applicable in this case **n/a** **Please initial one.**

Summary Explanation/Background: After many months of negotiations the Palm Beach County League of Cities and an "Ad Hoc Committee" (which consisted of municipal clerk's, the Supervisor of Elections, PBC League of Cities, and representing attorneys) have finalized the agreement for all Palm Beach County Municipalities to adopt. The contract outlines all the duties, responsibilities and

fees associated with a municipal election. Attorney Baird has reviewed the agreement and I addressed his comments with the Supervisor of Elections for clarification.

In anticipation of this contract the Clerk`s office has budgeted accordingly and no additional burden will be placed on the Town. Below are a few cost savings the Supervisor of Elections was able to obtain for all municipalities in the 2010 Election:

1. The Supervisor of Elections has renegotiated the cost of delivery of voting equipment to each location to ½ the cost. The Town was paying $120.00 per delivery (3 in Lake Park) and pickup after an election. The new cost has been cut in 1/2 .
2. Ballots will be 10 cents less. Absentee ballots went from .97 cents to .87 cents. Local absentee ballots went from .70 cents to .60 cents. Regular ballots .35 cents to .25 cents.

Attached is a spreadsheet which shows a column with the prepared budget for 2010 Municipal Election. the renegotiated cost provided by the Supervisor of Elections, and a balance of $313.50 overall.

Town of Lake Park

2010 Projected Budget - Municipal Election Costs

Precinct Number	Number of Registered Voters	Polling Location	Election Board Position/Cost	Total Poll Workers	Total Election Cost
1182	580	St. John	Precinct Clerk	$ 265.00	
			Precinct Advisor	$ 205.00	
			Inspector	$ 185.00	
			Inspector	$ 185.00	
			Inspector	$ 185.00	
1183	363	St. John	Precinct Clerk	$ 265.00	
			Inspector	$ 185.00	
1188	246	St. John	Inspector	$ 185.00	
			Inspector	$ 185.00	
1190	441	St. John	Inspector	$ 185.00	
			Inspector	$ 185.00	
			Deputy	$ 170.00	
					$ 2,385.00
7022	1520	Community Church	Precinct Clerk	$ 265.00	
			Precinct Advisor	$ 205.00	
			Inspector	$ 185.00	
			Inspector	$ 185.00	
			Inspector	$ 185.00	
			Inspector	$ 185.00	
			Deputy	$ 170.00	
					$ 1,380.00
1184	1344	Town Hall	Precinct Clerk	$ 265.00	
			Precinct Advisor	$ 205.00	
			Inspector	$ 185.00	
			Inspector	$ 185.00	
			Inspector	$ 185.00	
			Deputy	$ 170.00	
					$ 1,195.00
Possible Cost For A New Precinct	TBD	TBD	Precinct Clerk	$ 265.00	
			Precinct Advisor	$ 205.00	
			Inspector	$ 185.00	
			Inspector	$ 185.00	
			Inspector	$ 185.00	
			Inspector	$ 185.00	
			Deputy	$ 170.00	
This total has	been factored into	2010 Election Budget			$ 1,380.00
	4494			Grand Total	$ 6,340.00
				Per Election	

Town of Lake Park

2010 Projected Budget - Municipal Election Costs

Other "Estimated" Miscellaneous Election Expenses		Previously Budgeted	Renegotiated Amounts
Delivery of Voting Machines	120 per stop (4 stops)	$ 480.00	$ 240.00
Pick up of Voting Machines	120 per stop (4 stops)	$ 480.00	$ 240.00
Legal Advertisement of Public Notice (English & Spanish)		$ 145.00	$ 145.00
Cost of Printing Ballots @ .35 x 4494		$ 1,575.00	$ 1,123.50
Set up fee of $400 + $1.00 per precinct (shared during uniform municipal elections)		$ 407.00	$ -
Stand-Alone Municipal Election $400 set up fee + $1.00 per precinct			$ -
Absentee Ballots mail type .97 each x 50 (estimate) ballots		$ 48.50	$ 43.50
Local Absentee Ballots at .70 each x 10 (estimate)		$ 7.00	$ 6.00
Other Optical Scanning Cost	estimate	$ 100.00	$ 100.00
Extra Supplies for Poll Workers in 7 precincts		$ -	$ -
Poll Worker Training Costs @ $ 20 - $25 per Precinct		$ 175.00	$ 175.00
Polling Location Fee @ $100 x 3		$ 300.00	$ 300.00
Supervisor of Elections Administrative Fee			$ 2,338.00
Notice of Polling Location Change including $10.00 printing mailing labels and SOE processing fee of $3.00 per 1K records	estimate	$ 16.00	$ 16.00
Postage for mailing (Precincts 1183 & 1190)		$ 345.00	$ -
	Grand Total	$ 4,078.50	$ 4,727.00
	Per Election Cost		$ 11,067.00
	Balance of Renegotiation		$ 313.50
	Total Budgeted		$ 11,380.50

Palm Beach County LEAGUE of CITIES, Inc.

November 30, 2009

Dear League of Cities Municipal Members,

On behalf of the Palm Beach County League of Cities, I am pleased to be forwarding this finalized negotiated document, which has been worked on over the past several months on behalf of our municipal members, between our "Ad Hoc Committee on Municipal Elections," the Palm Beach County "Supervisor of Elections" (SOE) office and representing attorneys.

You should know that, this is the first time that all the duties, responsibilities and fees associated with hosting local municipal elections have been fully spelled out, laid out in "black and white" in a contract specifically intended for municipalities holding elections, with the Supervisor of Elections office to provide these services, which under state law may not even be required (of the Supervisor).

The League cannot obligate your municipality to this contract. Our Ad Hoc committee (made up of elected officials, city clerks, attorneys, SOE and League staff) has attempted to clarify and negotiate best practices and reasonable considerations for this purpose. Only public actions of your city-town-village commission or council, with advice of your legal counsel, can take the appropriate implementing steps. All pertinent details to municipal-only elections are outlined within the document being distributed.

We encourage immediate review of this very important contract by your legal counsel and subsequent action by your governing body to assure smooth elections cycles in 2010 and beyond. As the League of Cities, we are encouraging our members to strongly consider the participation in a uniform municipal election date and other issues raised by the SOE to maximize efficiencies, reduce costs overall for all the municipalities and help eliminate confusion to Palm Beach County voters.

On behalf of the League, I'd like to thank and appreciate everyone's earnest effort, patience and perseverance to get this job done on behalf of our membership.

Sincerely Yours,

James S. Titcomb
Executive Director

www.leagueofcities.org | jtitcomb@pbcgov.org
James S. Titcomb, Executive Director
(561) 355-4484 | (Fax) 355-6545
P.O. Box 1989, Gov. Center, West Palm Beach, FL 33402
Office: Governmental Center, 301 North Olive Ave., West Palm Beach, FL 33401

Florida League of Cities
SUPPORTING PARTNER

National League of Cities
Associate Members

AGREEMENT FOR VOTE PROCESSING EQUIPMENT USE AND ELECTION SERVICES BY AND BETWEEN THE PALM BEACH COUNTY SUPERVISOR OF ELECTIONS AND THE TOWN OF LAKE PARK

THIS AGREEMENT, is made and entered into this _____day of _____, 2009, effective January 1, 2010, by and between the Palm Beach County Supervisor of Elections, an elected county officer pursuant to Article VIII, Sec.1(d) of the *Florida Constitution*, hereinafter referred to as the "**SOE**", and the Town of Lake Park, a municipal corporation, chartered and organized in accordance with the laws of the State of Florida, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, Chapters 97 to 106, *Florida Statutes*, constitute the Florida Election Code (the "Code") which applies to municipalities where expressly so stated; and

WHEREAS, Sec 100.3605, *Florida Statutes*, states that "[T]he Florida Election Code, chapters 97-106 shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision"; and

WHEREAS, the Municipality and the SOE desire to work together to provide for municipal elections and to allocate certain responsibilities and expenses between the two parties to ensure that the provisions of the Code are followed during municipal elections; and

WHEREAS, the SOE and the Municipality wish to enter into this Agreement to set out the terms of this coordinated program.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter contained to be kept and performed by the parties hereto, and for the mutual benefit of the Municipality, its constituents and the SOE, it is agreed as follows:

1. **PURPOSE:**

The purpose of this Agreement is to set forth the terms and conditions under which services will be provided by the SOE and staff to the Municipality for municipal elections and to set forth the responsibilities of both parties so that there is a clear understanding of the rights and responsibilities of all parties. Such rights and responsibilities shall apply to the General, Run-Off, Special and Recount elections as necessary as well as the Post Election Audit, unless otherwise stated herein below.

2. **DATE OF GENERAL MUNICIPAL ELECTION:**

The date of the Town of Lake Park's General Municipal election is March 9, 2010. It is hereby acknowledged and agreed that if the date listed is the same as most other municipalities in March or November, there will be a cost sharing among municipalities for costs incurred by the SOE. Such costs shall be allocated on a pro-rata share basis;

otherwise, it is hereby acknowledged and agreed upon by the municipality that it is responsible for all costs of the election, incurred by the office of the SOE.

3. **FEES AND CHARGES TO BE PAID BY THE MUNICIPALITY:**

The SOE hereby agrees not to charge Municipality for taxpayer purchased equipment and supplies; (i.e. voting machines, tables, chairs, etc.) and associated maintenance and contract fees related to such equipment in return for which the Municipality hereby agrees not to charge the SOE for polling places within its dominion and control. Examples of municipal elections charges related to certain services performed by the SOE to be passed through to the Municipality on a shared pro rata basis for all municipalities holding elections on a general election day (i.e. 2nd Tuesday in March or November) are attached hereto as **Exhibit A**; Examples of total costs to small, medium and large municipalities are attached hereto as **Exhibit B**.

4. **RESPONSIBILITIES OF BOTH THE MUNICIPALITY AND THE SOE FOR MUNICIPAL ELECTIONS:**

A. **Notice and Advertisement**

(1) **Municipality**

(a) Properly call and advertise the election according to statutes and charter at its own expense.

(b) Issue a resolution or ordinance to the SOE requesting that the Supervisor of Elections conduct the municipality's election and act as a member of the Municipality's Canvassing Board.

(2) **SOE**

(a) Publish legal notices for Logic & Accuracy testing, absentee ballot canvass, Post Election Audit and news releases on book closing.

B. **Qualifying Candidates**

(1) **Municipality**

(a) Provide qualifying packets to candidates and accept and process all qualifying papers and fees.

(b) Collect Name and Pronunciation Guides from the candidates at the time of qualifying and submit to SOE.

(c) Respond to all candidate inquiries and questions.

(d) Respond to all legal inquiries and questions.

(e) Respond to all media inquiries.

(2) **SOE**

(a) Verify signatures on any qualifying petitions submitted by candidates and notify the Municipality of such results upon the close of the candidate qualifying deadline.

C. **Ballots**

(1) **Municipality**

(a) Review, amend (if necessary) and approve ballot proof prepared by SOE.
(b) Place an order with the SOE for a sufficient quantity of ballots as applicable.
*(c) Pay ballot design costs to the SOE as incurred.
(d) Pay the ballot printer directly for the cost of said ballots.
*(e) Reimburse the SOE for costs incurred for translation and audio recording of ballot.
*(f) Reimburse SOE for preparation of Absentee Ballot, Edge layout and Sample Ballot.

(2) **SOE**

(a) Layout, check, proof and delivery ballot layout to the printer.
(b) Receive, securely store and account for all ballots until disbursed to polling places.
(c) Contract to have audio recorded for Touch Screen ballot.
(d) Control all access to unvoted ballots while in the possession of the SOE.

D. **Equipment Testing**

(1) **Municipality**

(a) Provide that a representative will be present during the Logic and Accuracy testing as noticed by SOE.

(2) **SOE**

(a) Develop a unique test script and manually mark ballots to be used in public Logic & Accuracy test.
(b) Conduct public Logic & Accuracy test.

E. **Early Voting – Optional**

(1) **Municipality**

*(a) Reimburse the SOE for staff overtime hours due to weekend and/or evening hours for Early Voting.
*(b) Pay SOE for Early Voting supplies.
(c) Contract with, schedule and pay poll workers directly.

(d) Deliver voted ballots to SOE daily at a location designated by SOE.

(e) Designate Early Voting sites thirty (30) days prior to each Election and notify SOE in writing of locations.

(2) **SOE**

(a) Prepare and provide all supplies needed for each Early Voting site.
(b) Provide the Municipality with a list of poll workers.
(c) Train poll workers.
(d) Provide staffing to accept voted ballots daily at a location designated by SOE.

F. **Absentee Voting**

(1) **Municipality**

*(a) Reimburse SOE for all postage costs incurred at the current postal rate.
*(b) Pay SOE for materials and handling of each absentee ballot.
*(c) Pay SOE $.10 per absentee ballot for verifying signatures on returned voted ballot certificates.
(d) Refer all requests for absentee ballots to SOE.

(2) **SOE**

(a) Determine eligibility and compile Absentee Ballot file.
(b) Accept all requests for Absentee Ballots by telephone, mail or in person.
(c) Prepare and mail Absentee Ballots.
(d) Deliver Absentee Ballots to the Post Office.
(e) Receive voted Absentee Ballots.
(f) Verify signatures on returned voted Absentee Ballot certificates.
(g) Prepare and open Absentee Ballots for tabulation.
(h) Account for all Absentee Ballots.
(i) Notify Absentee Ballot voter and provisional voters of the disposition of the Canvassing Board as required by law.
(j) Record Absentee Ballot returns to voter history.
(k) Conduct public testing of Logic and Accuracy for Absentee Ballot tabulating equipment.
(l) Provide qualified staff to operate tabulation equipment to count Absentee Ballots.

G. **Polling Places**

(1) **Municipality**

(a) Arrange for the use of an adequate number of polling places.
(b) Confirm polling place accessibility and ADA compliance.
(c) Notify SOE in writing thirty (30) days prior to election of the need for

tables and chairs if necessary.

(d) Notify SOE of polling locations to be used.

(e) Notify the SOE not less than 30 days prior to the election that a polling place will be moved to another site.

(f) Notify voters, as required by law, if their regular polling place is to be temporarily relocated.

(2) **SOE**

(a) Provide the Municipality with a list of polling places and SOE contract.

(b) Provide tables and chairs upon written notice from the Municipality when required.

(c) Provide polling place supplies, i.e. signs, cones, etc.

(d) Notify voters and the Municipality of permanent polling place change.

H. **Precinct Supplies**

(1) **Municipality**

*(a) Pay SOE for precinct supplies provided.

*(b) Provide a secure place for precinct clerks to return supplies and voted ballots on election night.

*(c) Pay SOE for the production of Precinct Registers.

*(d) Pay directly to the SOE's contracted moving company to have voting equipment delivered and picked up from polling place no later than the day before the election and returned after the election.

(2) **SOE**

(a) Provide Precinct Registers for each polling place location.

(b) Provide Master CD compilation of registered voters for precinct advisors.

(c) Provide certification of registered voters after book closing.

(d) Prepare equipment, cabinets and routing of voting equipment delivery.

(e) Provide laptop computer at each polling place.

(f) Provide CD of voter file database for each polling place.

(g) Provide poll worker Clerks with cell phones.

(h) Provide Provisional Ballot envelopes and affidavit forms for each polling place.

(i) Provide secrecy sleeves in a number and amount appropriate for each polling place.

I. **Poll Workers**

(1) **Municipality**

(a) Contact, contract with and pay poll workers directly.
(b) Schedule and notify poll workers of training classes.
*(c) Reimburse SOE for expenses incurred for delivery and pick up of equipment to training locations.
*(d) Reimburse SOE for expenses incurred in printing training material.
*(e) Reimburse SOE for expenses incurred for trainers to train poll workers.
*(f) Reimburse SOE for expenses incurred for contracted training locations.

(2) **SOE**

(a) Provide the Municipality with a list of current poll workers.
(b) Develop poll worker training schedule.
(c) Plan and contract for training classes and locations.
(d) Contract with and pay trainers to train poll workers.
(e) Provide printed training materials for poll workers.

J. **Election Day Support**

(1) **Municipality**

(a) Verify that all polling places are available to poll workers no later than 6:00 a.m. and open for voting promptly at 7:00 a.m. on Election Day.
(b) Ensure that all polling places remain open until 7:00 p.m. or until all voters who are in line to vote at 7:00 p.m. have completed voting
*(c) Reimburse SOE for all phone bank costs.

(2) **SOE**

(a) Assist in finding poll worker replacements if needed.
(b) Provide technical support personnel as needed.
(c) Provide phone bank support to respond to poll workers and voters on Election Day.

K. **Ballot Tabulation/Counting of Election Results**

(1) **Municipality**
(a) Deliver all voted ballots and other necessary election related items to a place designated by the SOE after the polling places have closed on Election Day.
(b) Deliver **all** voting machine cartridges to a place designated by the SOE after the polling places have closed on Election Day.
*(c) Reimburse the SOE for any staff overtime and other expenses in relation to the tabulation and processing of ballots on Election Day.

(d) Act as member of Canvassing Board.

(2) **SOE**

(a) Provide technical staff and required equipment to administer tabulation and election results.
(b) Assist and act as a member of the Municipality's Canvassing Board (optional).
(c) Post election results on SOE WEB site and provide the same to Channel 20.
(d) Provide the Municipal Clerk with unofficial election results upon conclusion of tabulation and canvassing of ballots cast on Election Day.

L. **Post Election Day**

(1) **Municipality**

(2) **SOE**

(a) Provide the Municipal Clerk with an official certification of election results.
(b) Store all necessary election records and ballots until the expiration of retention period prescribed by statutes.
(c) Process polling place affirmation forms.
(d) Sort, inventory, pack and store all election materials for retention and disposition.
(e) Notify voters of the disposition of their Absentee or Provisional Ballots after the determination by the Canvassing Board, as required by law.
(f) Respond to public records requests regarding records kept on behalf of the Municipality.
(g) Record voting history for each voter who voted on Election Day.

M. **Audit**

(1) **Municipality**

(a) Provide that the Municipal Clerk will be responsible for the administration of the audit.
*(b) Reimburse SOE for any staff overtime or other related expenses as may result from conducting the manual audit.

(2) **SOE**

(a) Organize precinct information to allow the Municipal Clerk to randomly select the race and precinct(2) that shall be audited.
(b) Organize and prepare ballots for manual audit.
(c) Provide SOE staff to conduct manual audit.
(d) Ascertain and publically post manual audit result to SOE WEB site.

N. **Recount**

(1) **Municipality**

(a) Provide that the Municipal Clerk will be responsible for the administration of the Recount, with support and guidance from the SOE.
(b) Act as a member of the Canvassing Board.
(c) Notify the candidates of the time and date of the Recount.
(d) Post public notice(s) of the Recount with the time and location.
(e) Cause to have the Recount recorded and minutes kept and approved by the Canvassing Board.
(f) Review with the Canvassing Board and the counting teams the statutes and rules of the Division of Elections, specifically Rule 1S-2.031. Recount Procedures; and Rule 1S- 2.027. Standards for Determining Voter's Choice on a Ballot.
*(g) Reimburse the SOE for all staff salaries/overtime, facility and other expenses required to conduct the Recount.

(2) **SOE**

(a) Post public notice(s) of the Recount with the time and location.
(b) Test tabulating equipment as required by Sec. 101.5612, *Florida Statues.*
(c) Provide counting teams for examining out stacked ballots.
(d) Prepare and organize ballots for Recount processing.
(e) Tabulate ballots and provide professional staff for equipment operations.
(f) Provide official certification as determined by the Canvassing Board.

* all items to be paid or reimbursed to the SOE will be paid by the Municipality within thirty (30) days of receipt of an invoice from the SOE with documentation verifying the charges.

5. **INDEMNITY:**

Each party to this agreement shall be liable for its own actions and negligence. To the extent permitted by law, the Municipality shall indemnify, defend and hold harmless SOE against any actions, claims or damages arising out of the Municipality's negligence in connection with its performance under this Agreement; and the SOE shall indemnify, defend and hold harmless the Municipality against any actions, claims or damages arising out of the negligence of the office of the SOE in connection with its performance under this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth at Sec. 768.28, *Florida Statutes.* In no case shall such limits for the Municipality extend beyond $100,000 for any one person or beyond $200,000 for any judgment which, when totaled with all other judgments, arises out of the same incident or occurrence. These provisions shall not be construed to constitute agreement by either party to indemnify the other for such other's negligent, willful or intentional acts or omissions. Notwithstanding the above, the Municipality shall defend

legal challenges relating to its municipal election and shall be fully responsible for all legal costs for such defense of the Municipality and the SOE. The Municipality shall be responsible for damages, if any, assessed by virtue of such a lawsuit, up to the monetary limits provided for hereinabove without recourse to the SOE.

6. **TERM:**

This Agreement shall begin on the effective date January 1, 2010 and continue for a term of one year in order to cover Special Elections, if any. It shall be automatically renewed in accordance with the same terms and conditions as set forth herein upon the adoption of a Resolution by the Municipality requesting the SOE to conduct the municipality's election for the applicable year or may be modified by mutual agreement of the parties.

7. **CHANGE IN LAW:**

In the event any change in law abrogates or modifies any provisions or applications of this Agreement, the parties hereto agree to enter into good faith negotiations and use their best efforts to reach a mutually acceptable modification of this Agreement.

8. **NOTICES:**

All formal notices affecting the provisions of this Agreement may be delivered in person or be sent by facsimile, registered mail, or by a recognized overnight courier such as FedEx, to the individual designated below, until such time as either party furnishes the other party written instructions to contact another individual.

For the SOE:	For the Municipality:
Supervisor of Elections 240 S. Military Trail West Palm Beach, Florida 33415 Attention: Susan Bucher	Town of Lake Park 535 Park Avenue Lake Park, FL, 33403 Attention: Maria Davis

9. **SEVERABILITY:**

If any clause, section, or provision of this Agreement shall be declared to be unconstitutional, invalid or unenforceable for any cause or reason, or is abrogated or negated by a change in law, the same shall be eliminated from this Agreement, and the remaining portion of this Agreement shall be in full force and effect and be valid as if such invalid portions thereof had not been incorporated herein.

10. **NO MODIFICATION EXCEPT IN WRITING:**

This is the complete and final agreement between the parties. No representations other than those set forth herein shall be binding upon the parties. No modification of this agreement shall be effective unless submitted in writing and signed by both parties, or their duly authorized representatives.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective January 1, 2010.

As to the SOE:

WITNESSES:

SUPERVISOR OF ELECTIONS
PALM BEACH COUNTY

_____

_____

_____
Susan Bucher

Date: _____

As to the MUNICIPALITY:

ATTEST:

Town of Lake Park

_____

_____

Vivian M. Lemley, Municipal Clerk

Desca DuBois, Mayor

(Affix Municipal Seal)

Date: _____

Approved as to form and legal sufficiency:

By:_____
Thomas J. Baird, Town Attorney

Palm Beach County Supervisor of Elections Office

Summary of Activity For Municipal Elections

ABSENTEE BALLOTS	Costs $3.75	Cost per AB Ballot processed
* Process Absentee Ballot Requests	0 45	
* Prepare and mail Absentee Ballots (machine use, staff time, voter file, postage), record/verify absentee ballot returns, prepare/opening of absentee ballots for tabulation	2.25	
* Provide absentee voting - prep and mailing	1 00	
* Notification to Absentee Ballot and provisional voters on the disposition of Canvassing Board	0 05	

MUNICIPAL PACKAGE	$2,338	Cost per Municipal
* Arrange for translating, printing and recording of audio ballot	127	
* Provide polling place supplies - signs, cones, tables, chairs, etc.	25	
* Assist in finding poll worker replacements	54	
* Develop master CD compilation for precinct advisors	72	
* Provide certification of registered voters after book closing	60	
* Prepare Absentee Ballot, Edge layout and Sample Ballot	264	
* Publish legal notices for L&A testing, canvass and post elections and news releases on book closing, absentee ballots and other election related news	180	
* L&A test - development of a unique test script, manual ballot marking, pretesting for comparisons and pulling equipment for public tests	193	
* Election Day support (SOE staff and phone bank)	133	
* Election night support (SOE staff, vote tabulation and vote certification)	710	
* Assist municipality with canvass of Absentee Ballots, schedule canvass and act as member of Canvassing Board	290	
* Post election results on WEB site and Channel 20	94	
* Interface with candidates, press, city staff, city attorneys regarding Election Law	121	
* Conduct mandatory audit post election	14	

PRECINCT SERVICES	$155	Cost per precinct
* Copy of current polling place contract	0 15	
* Provide Clerks with cell phone, precinct registers, affidavits, bags,etc.	20 00	
* Delivery and Pick up of voting equipment to training locations	8 46	
* Prepare precinct scanners and ADA Touch screen equipment	3 32	
* Prepare equipment cabinets and routing of voter equipment	14 65	
* Copy of current poll workers	0 15	
* Create and retain voting history (post elections)	25 61	
* Plan training class locations/train pollworkers/provide printed training materials	68 33	
* Provide laptop computers for Precinct Advisors	13 93	
* Provide CD of voter file database for Precinct Advisors	0 50	

OPTIONAL SERVICES

* Registered Voters List, Mailing Labels, checks and verifications
* Petition Signatures
* EV Ballot printing costs (Runbeck BOD)
* Early voting support
* Run-offs, re-counts, costs, location, procedures,
* Court challenges, legal expenses
* Hire temporary staff as required

Exhibit A

PALM BEACH COUNTY SUPERVISOR OF ELECTIONS

Municipal Elections Charges

EXAMPLE OF MUNICIPAL COSTS *

MUNICIPALITY	MUNICIPAL PACKAGE	ABSENTEE BALLOTS		PRECINCTS		TOTAL COST
		# ballots	@3.75	# precincts	@ $155	
HAVERHILL	$2,338	40	$150	4	$620	$3,108
RIVIERA BEACH	$2,338	1,209	$4,534	16	$2,480	$9,352
BOCA RATON	$2,338	3,304	$12,390	47	$7,285	$22,013

* The volume of Absentee Ballots and precincts is based on 2009 election data
* *Costs do not include costs currently absorbed by municipalities i.e.; pollworker payroll, precinct rentals, advertising, security, and equipment delivery*

Exhibit B

TAB 3

Town of Lake Park Town Commission
Agenda Request Form

Meeting Date: January 6, 2010 Agenda Item No. 3

[X] **PUBLIC HEARING**
[X] **Ordinance on Second Reading**
[ ] Public Hearing

[ ] RESOLUTION

[ ] DISCUSSION

[ ] ORDINANCE ON FIRST READING

[ ] BID/RFP AWARD

[ ] GENERAL APPROVAL OF ITEM

[ ] CONSENT AGENDA

[ ] Other:

SUBJECT: Text amendment to Chapter 78 Section 78-74 C-4 zoning district.

RECOMMENDED MOTION/ACTION: Adoption

Approved by Town Manager for MVD **Date:** 12.31.2009

Originating Department: Community Development	Costs: $ N/A Funding Source: Acct. #	Attachments: **Ordinance** **Staff report**
Department Review: [ ] Town Attorney [ ] Community Affairs [X] Community Development	[ ] Finance [ ] Fire Dept [ ] Library [ ] PBSO	[ ] Personnel [ ] Public Works [ ] Town Clerk [ ] Town Manager
Advertised: Date: Paper: [ ] Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone 12/17/2009 Or Not applicable in this case: Please initial one.

Summary Explanation/Background: The proposed text amendments are for the permitted uses and special exception uses. In addition, the amendments propose adding a new sub-section to address outdoor storage. The purposes of the text changes are to more closely align the CLIC and the C-4 in their uses. Presently, the differences between the two districts seem arbitrary and this is an attempt to correct that situation by adding and subtracting appropriate uses. As an example, there are more auto repair facilities in the C-4 than in the CLIC and the C-4 prohibits that use while the CLIC allows it. Adding auto repair as a permitted use in the C-4 makes sense. There was also no rhyme or reason to the uses listed as requiring a special exception. This amendment categorizes the uses by impact. If a use has a potential extraordinary impact or nuisance factor (eg. Noise) then they will need a special exception to locate in the C-4 (traffic is always a good example, if the use has a tendency to produce an extraordinary amount of traffic then it should be reviewed by the special exception process and appropriate conditions attached to the permit). Finally, there are additional standards set out for outdoor storage.

ORDINANCE NO. 18-2009

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 78, ARTICLE III, SECTION 78-74 OF THE TOWN'S CODE OF ORDINANCES, ENTITLED "C-4 BUSINESS DISTRICT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission has adopted general provisions pertaining to land development and zoning, which have been codified in Chapter 78 of the Code of Ordinances of the Town of Lake Park; and

WHEREAS, the Town's Community Development Department has recommended to the Town Commission that Section 78-74 pertaining to the C-4 zoning district, be amended; and

WHEREAS, the Town's Planning and Zoning Board has reviewed the proposed amendments to the Town Code and has provided its recommendations to the Town Commission; and

WHEREAS, the Town Commission has determined that the recommended amendments would further the public's health, safety and general welfare.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:

Section 1. The whereas clauses are incorporated herein as true and correct and as the legislative findings of the Town Commission.

Section 2. Chapter 78, Article III, Section 78-74 is hereby amended to read as follows:

Sec. 78-74. C-4 business district.

Within the C-4 business district, the following regulations shall apply:
(1) General description. This district is intended to be located between the western boundary of Section 20 of Township 42 South, Range 43 East and the Florida East Coast (F.E.C.) right-of-way to the east, bounded on the south by the northern boundaries of parcels 307, 316 and 306, the eastern boundary of parcel 306 and then easterly on Watertower Road on a line extending to the Florida East Coast Railroad and on the north by the south boundary line of the existing C-1 commercial (business) district, as is shown on the Town of Lake Park Official Zoning Map. This area is served by major roads but is not feasible for heavy commercial or industrial developments. The regulations for this district are intended to encourage development compatible with surrounding or abutting districts, with suitable open spaces, landscapes and parking spaces. The intent of this district is to limit development to a concentration of permitted uses, by confining those permitted uses to business offices, wholesaling, retailing and light manufacturing activities.

(2) Uses permitted. Within the C-4 business district, no building, structure or land shall be used, and no building shall be erected, structurally altered or enlarged, unless otherwise permitted by those regulations, except for the following uses:

a. Appliance stores, including sales and service.
b. Auctions, enclosed.
c. Vehicle sales and repair
~~e.~~ d. Bakeries and Confectioneries
e. Boat, sales, service and storage
f. Building & Remodeling Suppliers --- wholesale and retail
~~d.~~ g. Business offices ~~and studios~~.
h. General Retail (Must have frontage on Old Dixie)
~~e. Confectioneries.~~
~~f. Dance instruction~~. h. Studios (e.g. Dance, Art, Photography, Martial Arts)
~~g.~~ i. Electronic equipment, sales.
~~h.~~ j. Furniture, sales.
k. Hardware, paint and garden supplies
~~i.~~ l. Laboratories, medical and dental.
~~j.~~ m. Laundry plants.
n. Mobile homes and recreational vehicles, including motorcycles, sales, service maintenance and storage
o. Monuments, sales
p. Nurseries and greenhouses
~~k.~~ q. Office/warehouse.
~~l.~~ r. Personal services, including but not limited to barbershops, beauty shops, masseurs and health studios.
~~m.~~ s. Precision instruments and optics.

~~n.~~ t. Printing and publishing plants.
~~o.~~ u. Public and private utility services.
v. Research and Development including Bioscience uses
w. Restaurants (including deli's and take out) that mainly service the tenants in the C-4 and CLIC districts. Drive through prohibited.
x. Self- Storage Facilities
~~p.~~ y. Taxidermists.
~~q.~~ z. Upholstery shops.
~~r.~~ aa. Buildings, structures and uses accessory and customary incidental to any of the above uses.

(3) *Special exception uses permitted.* Within the C-4 business district, no building, structure or land shall be used, and no building shall be erected, structurally altered or enlarged for the following uses unless a special exception has been approved by the town commission, pursuant to section 78-184 and the criteria set forth herein:

a. Auto paint and body shops.
~~b. Boats, sales, service and storage.~~
~~c. Building suppliers.~~
~~d.~~ b. Chemicals, storage and sales.
~~e.~~ c. Dry cleaning plants.
~~f. Hardware, paint and garden supplies.~~
~~g. Laboratories, medical and dental.~~
~~h.~~ d. Lumberyards.
~~i.~~ e. Machinery, sales and manufacturing.
~~j.~~ f. Millwork and woodwork, sales and manufacturing.
~~k.~~ g. Machinery, equipment, vehicle storage and other similar materials as a primary use or as an accessory use to another primary use.
~~k. Mobile homes and recreational vehicles, sales, service, maintenance and storage.~~
~~l. Monuments, sales.~~
~~m. Nurseries and greenhouses.~~
~~n. Storage warehouses.~~
~~o. Planned unit developments.~~

The town commission may permit special exception uses in the C-4 zoning district provided the town commission determines that the proposed use meets the special exception zoning criteria established in this chapter and is consistent with the goals, objectives and policies of the town's comprehensive plan. In order to ensure that the special exception use is consistent with and implements good zoning practices and the goals, objectives and policies of the town's comprehensive plan. The town commission may impose conditions upon the approval of a special exception use, including, but not limited to, conditions which require an

applicant to exceed standards which have been adopted pursuant to the town's land development regulations.

(4) *Other uses.* Other uses of the same general character as those listed above deemed appropriate by the town commission on an individual basis, after having received a recommendation from the planning and zoning board and appropriate town staff, and as per subsection (3) of this section shall be so determined after a public hearing is held pursuant to the following conditions:

a. Publication of notice of the time, place and purpose of such hearing shall be made in a newspaper of general circulation in the town at least ten days prior to the public hearing. ~~The person requesting said use shall be required to pay a filing fee of $250.00 to cover the costs of publication and notice.~~

b. A courtesy notice containing substantially the same information set forth in the published notice aforesaid shall be mailed by the town to the property owners of record within a radius of 300 feet of the described property; provided, however, that failure of any owner to receive such notice shall not affect any action taken hereunder. The property owner's list shall be prepared, certified and submitted by the person requesting such use, at person's expense. The notice shall be mailed at least ten days prior to the hearing.

(5) *Area regulations.* The following requirements shall apply to all uses permitted in this district:

a. *Front yard.* All buildings shall set back from all ultimate street right-of-way lines not less than 25 feet.

b. *Side yard.* No building or structure shall be located closer than 12 feet from one side yard line.

c. *Rear yard.* No building or structure shall be located closer than ten feet or a distance equal to one-half the building height from a rear yard line, whichever is greater. No rear yard is required where the lot abuts on an existing or proposed railroad right-of-way or spur that is utilized by the facility.

d. *Maximum lot coverage.* Main and accessory buildings, loading facilities and uses shall not cover more than 50 percent of the lot area.

e. *Impervious surface ratio of lot area.* With respect to drainage and stormwater runoff, the relationship of surfaces covered by buildings, paved parking areas and all other impervious surfaces such as vegetated open space and stabilized, unpaved parking areas shall be that deemed suitable for the proposed type of land use and buildings and in accordance with the South Florida Water Management District's permit information manual, volume IV, Management and Storage of Surface Waters.

f. *Impervious ratio calculation.* The impervious surface ratio is calculated for the gross site, and is calculated by dividing the total impervious surface by the gross site area. Water bodies are to be considered impervious and shall be included as such in the impervious surface ratio calculation.

g. *Treatment of cluster development.* Cluster development or other site design alternatives

may result in individual lots within a development project exceeding the impervious surface ratio, while other lots may be devoted entirely to open space. The town commission shall require, as a condition of approval, deed restrictions or covenants that guarantee the maintenance of such open space in perpetuity.

h. *Outdoor Storage.* Outdoor storage of goods, materials and vehicles and other suitable materials shall be allowed as an accessory use to the primary land use, provided it is on an improved, properly drained surface and is screened by fencing, landscaping, fence fabric, and/or suitable screening materials at a location on site deemed appropriate by the Community Development Director.

(6) *Height regulations.* No building or structure shall exceed four stories or 45 feet in height. No building or structure shall exceed three habitable stories. If a building contains four stories, then the first level must be dedicated entirely to parking facilities.

(7) *Minimum off-street parking and loading requirements.* See section 78-142 for off-street parking and loading requirements.

(8) *Screening and landscaping.* As regulated in the Town Code.

(9) *Requirement for platting.* All development or redevelopment in this zoning district shall be duly platted and recorded according to standards and procedures set out in chapter 67 of this Code regarding the land development code of the town. At the time of platting, a declaration of the covenants and restrictions to run with the land shall be filed of record whereby the individual lots, plots and building sites thereby created and the common areas, open spaces, easements, and right-of-way appurtenant thereto, shall be made subject to the development criteria of this Code and of the conditions of approval of the applicant's petition for development.

Section 3. **Severability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 4. **Repeal of Laws in Conflict.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. **Codification.** The sections of the Ordinance may be made a part of the Town Code of Laws and Ordinances and may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 6. **Effective Date.** This Ordinance shall take effect immediately upon adoption.

TAB 4

Town of Lake Park Town Commission
Agenda Request Form

Meeting Date: January 6, 2010 Agenda Item No. 4

[X] **PUBLIC HEARING**
[X] **Ordinance on Second Reading**
[ ] Public Hearing

[ ] RESOLUTION

[ ] DISCUSSION

[ ] ORDINANCE ON FIRST READING

[ ] BID/RFP AWARD

[ ] GENERAL APPROVAL OF ITEM

[ ] CONSENT AGENDA

[ ] Other:

SUBJECT: Text changes to Section 78-70 "Park Avenue Downtown District PADD"

RECOMMENDED MOTION/ACTION: Adoption

Approved by Town Manager for MVD **Date:** 12.31.2009

Originating Department: Community Development	Costs: $ N/A Funding Source: Acct. #	Attachments: **Ordinance** **Staff Report**
Department Review: [ ] Town Attorney_____ [ ] Community Affairs ____ [X] Community Development___	[ ] Finance _____ [ ] Fire Dept _____ [ ] Library _____ [ ] PBSO _____	[ ] Personnel _____ [ ] Public Works_____ [ ] Town Clerk _____ [ ] Town Manager _____
Advertised: Date: _____ Paper: _____ [ ] Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone_____ 12/17/2009 Or Not applicable in this case_____: Please initial one.

Summary Explanation/Background: This proposed Ordinance text amendment pertains to signage regulations in Town Code Chapter 78, Section 78-70, entitled "Park Avenue Downtown District". In a continuing effort by the Town to be flexible in addressing unique signage situations that occasionally arise within the PADD, Town Staff is recommending extensive revisions to the PADD Sign Code. The proposed changes provide for administrative waivers, expanded design criteria, changes to permitted and non-permitted signage and the elimination of out dated language. Please see the staff report for a more detailed explanation of the changes.

ORDINANCE NO. 19-2009

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING THE LAKE PARK MUNICIPAL CODE AT CHAPTER 78 ENTITLED "ZONING," ARTICLE III, SECTION 78-70, ENTITLED "PARK AVENUE DOWNTOWN DISTRICT"; AMENDING SECTION 78-70(l) ENTITLED "WAIVERS"; AMENDING SECTION 78-70(n) ENTITLED "SUPPLEMENTAL DISTRICT REGULATIONS" TO PROVIDE ADDITIONAL PROVISIONS PERTAINING TO OBSCURING GROUND FLOOR WINDOWS; AMENDING SECTION 78-70(p) ENTITLED "SIGNS" AT SUBSECTIONS (1), (2), (5), (6), (7) AND (8), TO CHANGE CERTAIN EXISTING SIGN REGULATIONS AND ADD PROVISIONS TO THE AFORESAID SUBSECTIONS REGULATING PROHIBITED SIGNS, PERMITTED SIGNS, CONSTRUCTION SIGNS, SIGN DESIGN REQUIREMENTS, SIGN ILLUMINATION REQUIREMENTS, AND NON-CONFORMING SIGNS; CREATING NEW SUBSECTION 78-70(p)(10) TO BE ENTITLED "ADMINISTRATIVE SIGN WAIVER PROCEDURE" WHICH DELEGATES CERTAIN POWERS AND DUTIES TO THE COMMUNITY DEVELOPMENT DIRECTOR TO GRANT SIGN WAIVERS UNDER LIMITED CIRCUMSTANCES; AMENDING TABLE 78-70-7 ENTITLED "PERMITTED SIGNS" TO CLARIFY RESTRICTIONS ON THE SIZE, NUMBER, AND COPY FOR SIGNS AND OTHER SIGNAGE RESTRICTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida ("Town") is a duly constituted municipality, having such power and authority conferred upon the Town by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission has adopted a Zoning Code which has been codified in Chapter 78 of the Code of Ordinances of the Town of Lake Park, and which includes in Article III of Chapter 78, regulations pertaining to specific zoning districts, including but not limited to, the Park Avenue Downtown (Zoning) District ("PADD"); and

WHEREAS, Town staff has recommended to the Town's Planning and Zoning Board, and the Town Commission, that Chapter 78, Article III, Section 78-70(n) of the Town Code, be amended to provide for the limited use of window graphics to allow certain types of personal service businesses, such as restaurants, dance studios, beauty parlors, theaters, and other similar personal services type business uses, to partially obscure a portion or all the windows on the premises of the particular business, in order to allow additional privacy for the clientele and patrons of these type of PADD businesses; and

WHEREAS, Town staff has recommended to the Town's Planning and Zoning Board and the Town Commission, that Chapter 78, Article III, Section 78-70(p), subsections (1), (2), (5), (6), (7) and (8), be amended to provide additional provisions pertaining to the individual Code Sections regulating prohibited and permitted signs, construction signs, design requirements, illumination requirements, and non-conforming signs; and

WHEREAS, Town staff has recommended to the Town's Planning and Zoning Board and the Town Commission, that Table 78-70-7 of Chapter 78 of the Town Code, entitled "Permitted signs" be amended to clarify the restrictions on the size, number, copy of signs, and other similar restrictions on signage within the PADD; and

WHEREAS, on August 24, 2009 the Lake Park Planning and Zoning Board reviewed the foregoing proposed Zoning Code text amendments to Chapter 78 of the Town Code, and together with Town staff have made their respective recommendations to the Town Commission; and

WHEREAS, the Town Commission has considered the evidence and the respective recommendations presented by Town Staff and the Town's Planning & Zoning Board, as well as other interested parties and members of the public, regarding the proposed Zoning

Code text amendments, the consistency of the proposed amendments with the Town's existing land development regulations and with the Town's Comprehensive Plan, and the goals, objectives, and intent of the PADD Zoning District generally; and

WHEREAS, the Town Commission, after conducting the required and duly noticed public hearings conducted in accordance with the requirements of state and local law, deems it to be in the interest of the public health, safety, and general welfare, to amend the Town Code at Chapter 78, Article III, Section 78-70(l) to acknowledge the delegation of limited authority to the Town's Community Development Director to grant sign waivers; to amend Section 78-70(n) to provide for additional regulations pertaining to window graphics; to amend Section 78-70(p), subsections (1), (2), (5), (6), (7) and (8), to provide additional provisions pertaining to these individual subsections of Town Code Section 78-70(p), which regulate among other things, prohibited and permitted signs, construction signs, design requirements, illumination requirements, and non-conforming signs; amending and Table 78-70-7 pertaining to permitted signs; and to create new Section 78-70(p)(10) to delegate the limited power and authority to the Town's Community Development Director to grant, deny, or grant with conditions of approval, administrative sign waivers provided that a majority of the established sign waiver criteria set forth in this subsection are met, and providing for an appeal process.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AS FOLLOWS:

Section 1: The whereas clauses are hereby incorporated herein by reference as true and correct findings of fact of the Town Commission.

Section 2. Chapter 78, Article III, Sections 78-70(l), 78-70(n), 78-70(p), and Table 78-70-7 of the Town Code are hereby amended to read as follows:

Sec. 78-70. Park Avenue Downtown District.

(l) *Waivers.* The provisions of this section shall apply to any application to waive signage, landscaping, height, property development regulations, district regulation, and certain other identified standards contained in this section. The intent of this section is to allow the town commission to be the sole decision maker regarding uses and structures within the Park Avenue Downtown District, with the exception of the authority delegated herein to the town's community development director pursuant to Section 78-70(p)(10) to grant, deny, or grant with conditions of approval, administrative sign waivers provided that a majority or more of the waiver criteria set forth in that subsection are satisfied.

(n) *Supplemental district regulations.* The following regulations shall apply to all uses and structures within the Park Avenue Downtown District:

(9) *Ground floor windows.* Absent a showing of good cause by the applicant, the windows of all ground floor businesses which are open to the public shall remain clear of curtains, shutters, or similar visual barriers in order to prevent obscuring ~~obscure~~ interior displays, activities, etc. Whether the applicant has demonstrated the town's community development director in the exercise of his/her sole discretion shall determine "good cause".

a. Exemptions. Under limited circumstances, personal service type businesses (i.e., restaurants, dance studios, theaters, hair salons, etc.) which can reasonably and credibly demonstrate through a showing of substantial competent evidence of good cause to the town's community development director, that it is in the best interest of the patrons, general public, and the town, that the applicant's business be allowed to obscure a portion or all of its windows, in order to provide privacy for its clientele and patrons, an exemption for this subsection may be administratively granted by the town's community development director. If an applicant demonstrates sufficient good cause for a partial or total obscuration of a window or windows of a business, the town's community development director may authorize the use of pre-approved window coverings; however, vertical and/or horizontal blinds are strongly discouraged as window treatments in such instances, and are likely to be denied an exemption.

(p) *Signs.* The provisions of this section shall apply to all new or existing signs within the Park Avenue Downtown District. These provisions are designed to address the unique characteristics of this ~~the~~ downtown district, and to enhance the architectural style and uses to be present in this area.

(1) *Prohibited signs.* The following signs are prohibited within the Park Avenue Downtown District:

~~a. A-frame, sidewalk, or sandwich signs;~~

~~b. Alley signs, excluding signage of not more than one square foot in area for business identification/delivery purposes;~~

a ~~c.~~ Balloon signs;

b ~~d.~~ Banners;

c ~~e.~~ Bench signs;
d ~~f.~~ Billboards;
e ~~g.~~ Cabinet signs;
f ~~h.~~ Changeable copy signs, excluding signs for activities whose principal use involves changes in performances, such as live theaters, movie theaters, comedy clubs, etc;
g ~~i.~~ Electronic message signs;
h ~~j.~~ Flags, except the ~~excluding~~ American, state, ~~and~~ ~~the~~ town of Lake Park flags, and the official flags of other nations; ~~as approved by the town manager~~;
i~~k~~. Freestanding signs, including monument signs, pole signs, and pylon signs;
~~l. General product signs;~~
j ~~m.~~ Inflatable signs;
k ~~n~~. Marquee signs, unless otherwise provided herein;
o. Neon used to outline windows, buildings, doors, etc;
~~p~~. Off-premises signs;
l ~~q~~. ~~Painted wall signs, with the exception of murals that are commissioned by the town depicting historic scenes of Lake Park;~~
m ~~r~~. Paper signs attached directly to a window or other surface, including "open," "closed," or similar signs;
~~s. Parapet-mounted signs;~~
n ~~t~~. Pennants and streamers;
~~u. Plastic lettering attached directly to a surface;~~
o ~~v~~. Roof-mounted signs; including on mansard style roofing;
p ~~w~~. Signs, which involve moving or rotating parts, intermittent lights, animation; and temperature display, or similar movements;
q ~~x~~. Signs, which emit smoke, sounds, odors, or any other visible matter;
r ~~y~~. Snipe signs;
~~z. Stab signs;~~
s ~~aa~~. String lights, unless otherwise provided herein; and
~~bb. Temporary signs; and~~
t ~~ee~~. Vending machines with product names, logos, lettering, etc., visible from a public right-of-way.

(2) *Permitted signs.* The following types of signs are permitted within the Park Avenue Downtown District:

a. Awning signs;
b. Light pole signs are only allowed if they are town-owned and contain town-approved signage;
c. Menu signs must be wall mounted or consist of an A-frame mounted signs and must be located near the entrance to the restaurant in order to be approved. Menus and/or other information such as restaurant or other reviews, photographs, autographs, memorabilia and other forms of displays shall not be affixed directly to a window or exterior door;
d. Neon signs utilizing a business name or logo;
e. Political signs;
f. Projecting signs;

g. Special events signs;
h. Wall signs; ~~and~~
i. Window signs.
j. Temporary real estate signs that advertise a property or space for sale or lease; provided, however, that any such temporary "for sale" or "for lease" sign(s) may not be larger than ~~six~~ four (4) square feet. The following additional requirements shall also apply to all such signs:

1. Only one sign per property is allowed;
2. The sign may only be located on the premises and/or property that is being advertised for sale or for lease in the sign;
3. The sign must be clearly temporary in nature, and may only be erected or placed on an exterior building wall, or inside a window of the premises; and
4. The sign must be professionally created or manufactured or produced (as opposed to handmade), and be generally aesthetically pleasing in keeping with the basic goals and intent of the PADD regulations~~.~~;

k. Vinyl window artwork or graphic signage, which has been reviewed and approved by the town's community development director. Vinyl artwork is exempt from the percentage of window area calculations and other attendant regulations, provided that the artwork contains a very limited amount of lettering which advertises the business and/or the products or services provided by the business, store hours, and/or other information;
l. A-frame, sidewalk or sandwich signs provided that the board on which the sign is to be affixed, and the sign lettering are both professionally produced by a business tax receipted professional signage business or company; and
m. Murals or painted wall signs may be allowed, after approval by the town's community development director.

(5) *Construction and Design requirements.* Signs installed within the Park Avenue Downtown District must ~~shall~~ be designed, constructed and maintained in accordance with all applicable requirements of the Florida Building Code as well as the following town standards:

a. Signs must be ~~Be~~ consistent and harmonious with the colors, materials, and architectural style of the premises on which the sign is to be located and surrounding properties; ~~building to which they are attached~~;
b. ~~Be of a scale that is consistent with the building to which they are attached;~~ The size and style of the graphics, the scale, proportion, design, material and texture of the sign, as well as the size and style of the lettering, shall advertise only businesses which are or will be located in the premises on which the sign is to be placed. The content of the signage must directly relate to the building or structure (or businesses located therein) that the sign is to be attached to. Signs shall be consistent and harmonious with the architectural style of the subject premises on which the sign is to be affixed, as well as the surrounding properties and the design regulations for the PADD.

c. Signs shall not contain excessive illumination or ornamentation. When determining whether a sign or signs contain excessive illumination, the community development director shall consider factors, including but not limited to the following circumstances and conditions when making his/her determination: the size of the business; the location of the business; the amount of light spillage on surrounding areas; the proximity of the proposed signage to residential areas; the type/use of the business; whether the signage will be distracting, disturbing, or aesthetically unpleasing; the consistency with the signage of the proposed signage with that of signage on nearby and surrounding properties; the consistency of the proposed signage with the comprehensive plan; and any other relevant considerations.

d If the architecture of the building or structure allows for specific locations for signs, all signage shall be limited only to those areas.

e. Signs shall be an integral part of the design of storefront alterations and new construction. Signs shall not obscure materials or prominent architectural elements of buildings or structures.

f. The design and alignment of signs located on multiple-use buildings shall be coordinated so as to achieve a unified appearance.

g. Unless otherwise conditioned as part of the sign approval, all signs shall be constructed of good quality, permanent materials and shall be permanently attached to the structure or building.

h. Window signs which are permanently affixed to the external or internal side of windows, shall consist of a medium grade or premium grade vinyl, digital image using solvent coloring, or other similar type material, shall be consistently maintained in a good and aesthetically pleasing condition, and shall be removed or replaced on an as needed basis due to use, age, and wear and tear.

i. All signs shall comply with all applicable provisions of the current edition of the Florida Building Code and any Town amendments thereto, and the current edition of the National Electrical Code ("NEC"), as published by the National Fire Protection Association ("NFPA"), including specifically, NFPA 70 pertaining to the standards for the safe installation of electrical wiring and equipment, as well as NFPA 101 a/k/a the "National Life Safety Code", and all other applicable codes and regulations, even if not expressly enumerated herein.

(6) *Illumination.* ~~Illumination for permitted signs shall be provided by indirect lighting.~~ The general standard for illumination for permitted signs shall be provided by indirect lighting, halo-type lighting or channel set letters.

a. Indirect lighting for signs shall be provided by "goose neck" fixtures, or other architecturally compatible equipment or fixtures.

b. Use of backlit signs and awnings ~~is~~ are prohibited, unless ~~backlit awnings are~~ approved by the community development director. t~~own manager~~.

c. Freestanding pinned or halo-type letters made of metal, sintra or plastic materials. Other materials shall be reviewed for acceptability as an alternative equivalent.

d. Channel set letters with regular or LED lighting are permissible.

The community development director review of PADD signage and design will always take into consideration the quality of the proposed signs (e.g., box signs with vinyl graphics shall generally not be approved.) Signs with dimension or depth are encouraged and preferred. Individual letters are preferred over box signs. Flat signs containing vinyl lettering/graphics only are strongly discouraged. Interior lit changeable copy signs for theaters and similar types of uses are permissible.

(7) *Sign removal.* The face or copy of a sign or signs which advertises a business, product, service, or other use of property that has ceased operating, or which has been closed for business to the general public, or which has been abandoned, ~~such business or activity~~ for more than 30 consecutive days, shall be removed and replaced with blank faces or appropriate light shields by either the property owner, the occupant, or the Town or its independent contractors if so authorized by a final order of the code enforcement special magistrate. In the event the Town is required to conduct the remedial measures required by this section to correct a violation, all fees and expenses incurred by the Town in effectuating the remedial measures shall, in addition to any fines and other administrative costs and expenses that may have been imposed, constitute a lien against the real property on which the sign(s) is located. The lien may be recorded in the pubic records of Palm Beach County and shall bear interest at the then-current statutory rate until paid in full.

(8) *Nonconforming signs.* The provisions of this section 78-70(p) shall apply to all signs, and specifically including signs, which were constructed or installed prior to the enactment of section 78-70(p). ~~effective date of the ordinance from which this section is derived~~. All ~~such~~ signs that do not conform to the requirements of Section 78-70(p) are ~~are considered~~ illegal nonconforming signs, and must be removed or brought into compliance with the requirements of section 78-70(p) are expressly required by section 78-70(p)(8)(a) and (b). ~~A sign illegally constructed or installed prior to the effective date of this section shall continue to be considered an illegal sign.~~

a. Illegally constructed or installed signs shall be removed immediately, or may become ~~be~~ the subject of code enforcement action commenced by the town.

~~b. Nonconforming signs may be repaired and maintained subject to section 70-104.~~

~~c. The sign face or copy of a nonconforming sign may be replaced when a change occurs affecting a business, product, service, or other use of property.~~

b. ~~d~~. After ~~By~~ August 6, 2002~~, five years after the date of adoption of the town core commercial zoning district,~~ all nonconforming signs shall be removed or be brought into compliance with the requirements of this section 78-70(p).

~~e. Within 60 days following the effective date of this section, the town shall notify all property owners of the revised sign requirements and of the requirement to remove nonconforming signs or bring such signs into conformity.~~

~~f. A property owner or tenant may appeal to the town commission for a time extension or waiver from the requirement to remove a nonconforming sign or signs. An application to request a time extension or waiver from the sign removal requirement shall contain the following information:~~

~~1. The name and address of the property owner;~~

~~2. A survey or other similar document indicating the specific location and size of the affected sign;~~

~~3. A copy of the building permit for the affected sign;~~

~~4. A certified estimate of installation costs;~~

~~5. A certified estimate of replacement costs;~~

~~6. How the request for time extension or waiver complies with the waiver criteria contained in subsection (l)(7) of this section;~~

~~7. Other information in support of the request; and~~

~~8. The additional amount of time requested prior to or waiver from removal of the sign.~~

~~g. The town commission may grant a waiver from the removal requirement, grant the entire time extension requested, grant a partial time extension, or deny the request. The waiver criteria contained in subsection (l)(7) of this section shall be utilized by the town commission when making its decision.~~

(10) *Administrative sign waivers procedure.*

(a) Sign waivers. Waivers from the strict interpretation of section 78-70(p) may be granted by the community development director for good cause only, and provided that a majority of the required waiver criteria as set forth herein have been met. The burden of proving that a majority of the waiver criteria have been met is on the applicant. It is the intent of the community development director to review sign waiver requests, based upon the anticipated impact of the proposed waiver on other properties within the PADD, the town at-large, as well as the requirements of the applicant, and to balance the needs of each. For purposes of this section, an applicant for a sign waiver shall demonstrate "good cause" by complying with a majority of the following waiver criteria:

Sign waiver criteria:

(1) special and unique conditions exist which are peculiar to the applicant's case and which are not generally applicable to the property located within the PADD, such as natural or manmade sight limitations from public rights-of-way;

(2) the special and unique conditions are not attributable to or result from the actions of the applicant;

(3) the granting of the waiver would not confer any special privilege or benefit on the applicant that is denied by the provisions of this section to other lands, buildings, businesses, or structures within the PADD;

(4) the literal interpretation of section 78-70(p), as applied to the applicant, would deprive the applicant of rights commonly enjoyed by persons who are similarly situated;

(5) the waiver granted is the minimum waiver necessary for the applicant to make reasonable use of the property;

(6) granting the waiver is not detrimental to the public welfare, or injurious to property or improvements in the PADD, or the town in general;

(7) The application is consistent with the intent of section 78-70;

(8) The application furthers the town's goal to establish a neighborhood and community-serving urban center;
(9) The application furthers the architectural and site design elements of section 78-70; and
(10) The application demonstrates the request for waiver will be in harmony with the general intent and purpose of section 78-70, and that such waiver or waivers will not be injurious to the area involved or otherwise detrimental to the public health, safety, and welfare.

(b) *Application for sign waivers*. The application for a sign waiver shall be on a form provided by the town clerk and accompanied by a filing fee as specified by resolution of the town commission. Each application for a waiver under this section shall be in writing and shall justify and detail the reasons for the request for a waiver using the waiver criteria contained herein. The applicant must present substantial competent evidence to justify the waiver, together with the completed application form. Any written justification statements, which are submitted as evidence in support of the waiver request by a purported expert, and/or any other individual, must be sworn to under oath, signed and notarized. The application shall also be signed by the applicant or the applicant's authorized agent, and the sign company who shall be responsible for creating and installing the sign for which the sign waiver is being sought. Applicants represented by agents must submit written evidence of the delegation of agent authority or a power of attorney.
(c) *Sign waiver application review*. An application for a waiver under this section shall be deemed abandoned thirty (30) days after the date the community development department ("department") notifies the applicant of any deficiencies contained in the application. The department may, upon written request and justification by the applicant, grant not more than one 30-day extension. At the expiration of the 30-day period, or any extension thereof, the application shall automatically expire and become null and void. Permit fees and charges paid at the time of application, and plan review fees, shall be refunded, except that an administrative fee shall be retained. Each application for a waiver of the provisions of this section shall first be reviewed by the community development director for technical sufficiency and compliance with this section. The community development, after considering all of the substantial and competent evidence provided by the applicant or the applicant's agent in conjunction with all of the waiver criteria as set forth herein, shall render a written final administrative order containing findings of fact and conclusion of law, either granting the waiver, granting the waiver with conditions of approval, or denying the waiver. Any applicant aggrieved by a decision of the community development director may appeal the final decision as provided in town code section 78-186 to the Planning and Zoning Board. (d) *Abandonment or expiration of sign waiver*. A waiver granted by the community development director shall automatically expire either (a) 18 months from the date of the rendition of the written resolution of the community development director granting the waiver, if a building permit has not been issued in accordance with the plans and conditions upon which the waiver was granted, or (b) if the building permit issued in accordance with the plans and conditions upon which the waiver was granted expires and is not

renewed pursuant to the applicable provisions regarding renewal of building permits. The final decision of the community development director on the waiver application shall be set forth in a written administrative final development order.

TABLE 78-70-7
PERMITTED SIGNS

TABLE INSET:

Sign Type	Maximum Size	Maximum Number	Copy Limit	Other Limits
Awning Sign	~~3 square feet~~ In proportion to the size of the awning	~~1 per front OR side~~	Business name, address, phone number, and logo, and words depicting the nature of business (letters shall be not more than 50% of the height of the letters depicting the business name)	*Letters, numbers, and logo shall not exceed 6 inches in height.
	--	--	--	*Located only on a valance
Changeable Copy Sign	Not more than 50% of any portion of a building fronting on or facing Park Ave.	1 per front of building	Business name, and words describing the nature of the business (letters shall be not more than 50% of the height of the letters depicting the name of the business.) The name, time, and date of current and upcoming events may also be displayed.	*May substitute as a wall sign, but shall not be used in addition to a permitted wall sign.
	--	--	--	*Marquee sign may be used

	--	--	--	*Marquee sign may extend over walkways, a minimum 8-foot clearance is required.
	--	--	--	*Marquee shall not extend beyond top of roof
	--	--	--	*Marquee sign shall be proportionate to size of building
Flags	Display of flags of the United States shall be in accordance with current U.S. Code of Federal Regulations (C.F.R.) to the extent reasonably possible, and flag size shall be ~~P~~roportionate to the size and height of the flag pole	1 flag pole per business	US, Florida, official flags of other nations, and the flag of the Town of Lake Park. ~~flags~~	*Freestanding flagpoles shall not exceed 50 feet in height, except for otherwise permitted stealth telecommunications facilities in a flagpole design.
	--	--	--	*Building-mounted flag poles shall not extend into any public right-of-way.
Public Light Pole Sign	Per Town Commission	~~1 per pole~~ -	Per Town Commission	*Must be approved by Town Commission or designee.
Menu Sign (Restaurants only)	3 square feet	1 per restaurant	Restaurant menus	*Within 2 feet of front door
	--	--	--	*Mounted on exterior wall or in a window
	--	--	--	*May be enclosed in a cabinet
Neon Sign,		1 per	Business logo,	*Mounted flush with

LED or similar technology	a maximum size of six (6) square feet ~~in a window~~.	business	name, open sign or depiction of product	wall or in window
	--	--	--	*First floor location only
	--	--	--	*One face only
	--	--	--	*Shall not project by more than 8 inches
	--	--	--	*Shall not be located on arcade or similar facade
	--	--	--	*May be located above or below canopy or arcade
	--	--	--	*May be used as a substitute for or part of a wall or window sign
Projecting Sign	~~3~~ 6 square feet	1 per business	Business name, phone number, and logo, and words describing the nature of the business (letters shall be not more than 50% of the height of the letters depicting the name of the business.)	*Letters, numbers, and logo shall not exceed 6 inches in height.
	--	--	--	*Minimum clearance of 8 feet above sidewalk or public walkway
Political Signs	None	None	None	*Allowed pursuant to chapter 70.
Special Events Signs	Banners shall not exceed 20 square feet Sandwich signs shall not exceed 6 sq feet	One wall mount or one banner per 500 ft frontage and one	Only on the property	*Signs, pennants, flags, streamers, banners, etc., as approved by the community development director-for special events and for a limited

		sandwich sign		duration as specified in the permit.
	--	--	--	*Number, size, and location of signs to be approved by the community development director
	--	--	--	*Display of signs shall not exceed 14 calendar days
	--	--	--	*Not more than 4 special events may occur on the same site or at the same use for each calendar year
String Lights	None	None	None	*String lights may not spell out or resemble the logo of any commercial product or use.
	--	--	--	*Installation at places of business and on commercial or industrial properties, must be approved by the community development director.
	--	--	--	*Installation in landscaping can be permanent
	--	--	--	*Installation as a seasonal decoration may be displayed for a period not more than 45 calendar days
	--	--	--	*Installation as a seasonal decoration may occur not more than 6 times per year
	--	--	--	*Installation as a seasonal decoration,

				may be used for any one or more of the following holidays: beginning of the Christmas holiday season through and including New Year's Day or only New Year's, Thanksgiving, Halloween, Easter, and Kwanza, and Hanukkah
	--	--	--	*Additional holidays may be recognized by the Community Development Director, upon the showing of good cause by the applicant.
Temporary real estate and for sale signs	~~6 square feet~~ 9 square feet (permit fee required) 4 square feet (exempt from permit fee)	1 per property that is for sale or rent	Name, address, and phone number of agent; copy indicating that the subject property is "for sale" or "for lease", and other information deemed necessary and appropriate at the time of sign permitting.	*Professionally produced or created
	--	--	--	*Located on an exterior wall or in a window only, freestanding signage is strictly prohibited
	--	--	--	*A temporary sign permit is valid for 6 months from the date of permit issuance. A new permit must be applied

				for after the initial 6 month period expires. After the issuance of two temporary sign permits for the same property, the community development director, has the discretion to deny a request for an additional temporary sign permit on the grounds that the sign is not a temporary sign.
Wall Sign	50% of building frontage facing Park Ave., 30% of building frontage for side streets	1 per business	Business name, logo, address, phone number, and words describing the nature of the business (letters shall be not more than 50% of the height of the letters depicting the name of the business.)	~~*Mounted flush with wall~~
	--	--	--	*First floor location only
	--	--	--	*One face only
	--	--	--	*Shall not project by more than 8 inches
	--	--	--	*Shall not be located on arcade or similar facade
	--	--	--	*May be located above or below canopy or arcade
	--	--	--	*May be painted directly on wall if approved by the community development

				director. ~~only if the rendering is commissioned by the Town Commission, and the painted area accurately depicts a scene of historic Lake Park.~~
Window Sign	No more than 25% of any single window panel or pane. Vinyl window art panels without lettering, are exempt from the size percentage	1 per window	Business name, address, logo, ~~and~~ telephone number, and words describing the nature of business.	*Must be painted or applied directly onto the window surface, or hung within 6 inches of the window. Placement and design must be consistent, harmonious, and unified throughout all windows in the building.
	--	--	--	*Neon sign(s) may be used for all or part of permitted signage.
	--	--	--	*Shall be located only on the first floor.
	--	--	--	*Stand alone lettering is strongly discouraged. Lettering that incorporates graphic elements, borders, and backgrounds is preferred.
				*Plastic, vinyl, or other similar lettering of any form that is applied directly to a window is deemed to be a sign for purposes of this Section, and requires a sign permit approved by the

				Community Development Department prior to placement on a window.

Section 3. Severability. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of this Ordinance shall not be affected by such invalidity.

Section 4. Repeal of laws in conflict. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

Section 5. Codification. The sections of the Ordinance may be made a part of the Town Code of Laws and Ordinances, and may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 6. Effective date. This Ordinance shall become effective immediately upon adoption.

TAB 5

Town of Lake Park Town Commission
Agenda Request Form

Meeting Date: **January 6, 2010** **Agenda Item No.** 5

[ ] PUBLIC HEARING [ ] RESOLUTION

[ ] ORDINANCE ON SECOND READING [ ] DISCUSSION

[X] ORDINANCE ON FIRST READING [ ] BID/RFP AWARD

[ ] GENERAL APPROVAL OF ITEM [ ] CONSENT AGENDA

[ ] Other:

SUBJECT: **Charter Change Ordinance reflecting the Department of Justice decree with the Town of Lake Park of Limited Voting**

RECOMMENDED MOTION/ACTION: **Approval**

Approved by Town Manager _____ for MVD **Date:** 12.29.09

Vivian Lemley December 28 2009

Name/Title Date of Actual Submittal

Originating Department: **Town Clerk**	Costs: $ Funding Source: Acct. #	**Attachments:** Ordinance Decree
Department Review: [ ] Attorney_____ [ ] Community Development___ [ ] Finance _____ [ ] Fire Dept _____	[ ] Grants _____ [ ] Human Resources_____ [ ] Library _____ [ ] Marina _____ [ ] PBSO _____	[ ] Public Works_____ [ ] Recreation _____ **[X] Town Clerk-** VML [ ] Town Manager _____
Advertised: Date: _____ Paper: _____ [ ] Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone_____ or Not applicable in this case **n/a** **Please initial one.**

Summary Explanation/Background: As a result of the Department of Justice Decree with the Town of Lake Park the attached Ordinance reflects the Charter Change to Limited Voting. Every three (3) years the four (4) Commissioners will be up for Election and those with the highest votes will obtain a seat on the Commission. Each voter will be allowed to cast one (1) vote per ballot.

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

THE UNITED STATES OF AMERICA, Plaintiff, v. TOWN OF LAKE PARK, FLORIDA, and COMMISSIONERS PATRICIA PLASKET-OSTERMAN, JEFF CAREY, ED DALY and KENDALL RUMSEY, in their official capacity as members of the Lake Park Town Commission, and DESCA DUBOIS, in her official capacity as Mayor of Lake Park. Defendants.	)	CIVIL ACTION NO. 09-80507-MARRA

CONSENT JUDGMENT AND DECREE

The United States filed this action alleging that the current at-large method of electing the Commissioners for the Town of Lake Park (the "Commissioners"), enhanced by the use of staggered terms and designated posts, results in black citizens of the Town of Lake Park (the "Town") having less opportunity than white citizens to participate in the political process and elect candidates of choice in violation of Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973 ("Section 2"). The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 1973j(f).

The parties, through counsel, have conferred extensively and agree that it is in the best interest of all parties that this lawsuit be resolved without the expense of protracted, costly and potentially divisive litigation. The parties share the goal that all future elections for the Town's Commission are conducted under a method of election that allows the Town's black citizens the opportunity to elect their candidates of choice, in compliance with Section 2. Accordingly, the parties have entered into the following Consent Judgment and Decree (the "Decree") as an appropriate resolution of this civil action.

The parties stipulate as follows:

1. Defendant Town of Lake Park (the "Town") is a municipal corporation in the State of Florida. The Town is located in Palm Beach County.

2. According to the 2000 U.S. Census, the Town has a total population of 8,721. Of this population, 4,256 (48%) are black. The Town's total black citizen voting age population is 38%. White voting age citizens comprise a fifty-three percent majority in the Town.

3. Defendants Patricia Plasket-Osterman, Jeff Carey, Ed Daly, and Kendall Rumsey are elected members of the Commission, a body established under the laws of the State of Florida and Article IV of the Charter for the Town. Defendant Desca Dubois, Mayor of Lake Park, serves as a fifth voting member of the Commission in legislative matters. All Defendants are sued only in their official capacity.

4. Lake Park's municipal form of government as set forth in its charter is "Commission-Manager." The elective offices are the Mayor and four Commissioners, each of whom are elected at-large to three-year staggered terms. The four Commissioners are

elected to Posts A, B, C, and D. Posts A and C have elections in the same year; Posts B and D are elected in the subsequent year.

5. Since Lake Park was incorporated in 1923, no black candidate for the Commission ever has won an election.

6. Were this matter to proceed to trial, the United States would prove using 2000 U.S. Census data that the black population of the Town of Lake Park is sufficiently numerous and geographically compact to constitute a majority of the voting-age population in as many as two reasonably compact voting districts under a hypothetical four-district plan. The parties therefore stipulate that the United States can establish the first Thornburg v. Gingles factor ("Gingles" factor) as to liability. 478 U.S. 30 (1986).

7. Were this matter to proceed to trial, the United States would prove, using statistical and non-statistical evidence, including analysis of the Town's past election returns and voting patterns, that the black population of Lake Park is politically cohesive, and that white persons vote sufficiently as a bloc to usually defeat the preferred candidate of black voters. The parties therefore stipulate that the United States can establish the second and third Gingles factors as to liability. 478 U.S. 30 (1986).

8. Defendants concede that there is a basis in both fact and law for believing that the current at-large method of electing Commissioners, under the totality of the circumstances, results in black citizens of the Town having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice, in violation of Section 2.

9. The United States makes no claim of intent in this action. Proof of discriminatory intent is not necessary in proving a violation of Section 2 of the Voting Rights Act.

10. Defendants have agreed to discontinue the use of the current at-large method of electing the Commissioners, and, in place thereof, to adopt a limited voting plan that provides for the election of the Commissioners with concurrent terms. Under this limited voting plan, the voter may vote for only one candidate.

11. Defendants have agreed to support and seek passage of an ordinance, to be drafted by the Commission that would adopt the limited voting method of election set forth by this Decree.

THEREFORE, with the consent of the parties, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The existing at-large method of electing the Commissioners of the Town of Lake Park, implemented in the totality of circumstances, results in a denial or abridgment of the right to vote on account of race or color in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

2. The current at-large method of electing the Commissioners is replaced by a limited voting plan providing for the election of four Commissioners with concurrent terms, in compliance with Section 2. Defendants shall adopt this revised election plan as follows:

   a. Four Commissioners shall be elected in town-wide contests under concurrent terms.

b. In such elections voters will be limited to casting a vote for only one candidate, in order to provide minority voters a reasonable opportunity to elect a candidate of their choice.

c. The four candidates receiving the highest number of votes shall be elected to the Town Commission.

3. The schedule for implementing the new method of election shall be as follows:

a. On March 9, 2010, in the regularly scheduled municipal election, four Commissioners shall be elected. Candidates shall run for three-year terms. Thereafter, all Commission members shall be elected to concurrent three-year terms on the Town's regular municipal election date.

b. Candidates shall qualify as candidates with the Lake Park Town Clerk.

4. Defendants shall codify this Limited Voting election system for the Commission seats set forth in the Town Charter and Code of Ordinances.

5. Except as inconsistent with or specifically altered by the terms of this Decree, all State and local laws shall continue to govern elections for the Commission.

6. Subsequent to the entry of this Decree, should Defendants or their successors desire to change or depart from the terms of the Decree, any such change, departure, or revision to the limited voting plan outlined in this Decree shall be made in compliance with Section 2 of the Voting Rights Act, and in accordance with constitutional standards.

7. This Court shall retain jurisdiction over this matter to enforce the provisions of the Decree and for such further relief as may be appropriate under the Voting Rights Act and the United States Constitution.

8. As between Defendants and the United States, each party shall bear all of its own costs, expenses, and attorneys' fees in this case.

9. The Clerk shall CLOSE this case.

ENTERED and ORDERED this 26th day of October 2009.

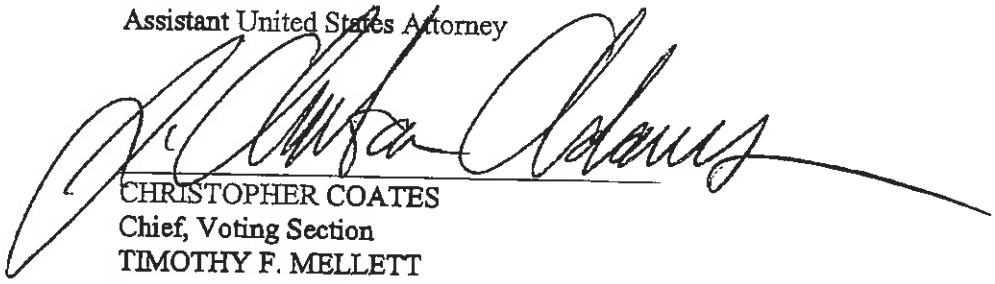
UNITED STATES DISTRICT JUDGE

We ask for this:

FOR THE UNITED STATES OF AMERICA:

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

JEFFREY H. SLOMAN
Acting United States Attorney
Southern District of Florida
Veronica Harrell-James
Assistant United States Attorney



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FOR THE TOWN OF LAKE PARK, COMMISSIONERS OF THE TOWN OF LAKE PARK IN THEIR OFFICIAL CAPACITY, AND MAYOR OF LAKE PARK IN HER OFFICIAL CAPACITY:

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ORDINANCE NO. 01-2010

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING THE TOWN CHARTER TO COMPLY WITH A CONSENT DECREE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA; AMENDING OF ARTICLE IV, SECTION 1, ENTITLED "ELECTED OFFICERS"; AMENDING ARTICLE XVI, SECTION 17, ENTITLED "RUN-OFF"; AMENDING ARTICLE XVI, SECTION 22, ENTITLED "FORM OF BALLOT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida is a duly constituted municipality having the power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, prior to July 1, 1973 the Town Commission adopted a municipal Charter, which contains among other matters, provisions pertaining to officials elected to the office of Town Commission; and

WHEREAS, both Section 166.021(4) and Section 166.031, Fla. Stat. (2007), set forth the procedures to be followed in amending municipal charters adopted prior to July 1, 1973, and which charters have not been subsequently readopted; and

WHEREAS, pursuant to the provisions of Section 166.021(4), Fla. Stat. (2007), amendments to municipal charter provisions which were adopted prior to July 1, 1973, such as the Town's Charter, may be made by ordinance if the proposed changes do not affect the basic organizational and administrative structure of the municipal government, and if the proposed changes do not fall within any of the statutorily excluded areas which expressly require a referendum in order to adopt the proposed charter amendment; and

WHEREAS, the provisions of Section 166.021(4), Florida Statutes pre-empted by the supremacy clause and that certain Consent Decree by the United States District Court for the Southern District of Florida; and

WHEREAS, the Consent Decree requires that the Town change the manner in which candidates for Commission seats are elected by imposing a method known a "Limited Voting" which supersedes and replaces the current method of at-large elections by staggered Commission seats.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:

Section 1. The whereas clauses are incorporated herein as the legislative findings of the Town Commission.

Section 2. The municipal Charter for the Town of Lake Park, Article IV, Section 1, 2 & 3 are hereby amended to read as follows:

ARTICLE IV. [ELECTIVE OFFICERS]

Section 1. Elective officers.
The elective officers under this charter shall be the Mayor and the members of the Town Commission. The Mayor and members of the Town Commission shall all be elected in a general election in accordance with the terms and schedule set forth in Section 3, below ~~specific groups with specific designations~~ as follows:
Mayor
Commissioner ~~Group A~~
Commissioner ~~Group B~~
Commissioner ~~Group C~~
Commissioner ~~Group D~~

Section 2. Ballot designations.

Section 3. Term of elected office: schedule of election of Mayor and Commissioners.
The Mayor and Commissioners shall be elected for terms of three (3) years each, ~~except as set forth to the contrary herein. In the municipal election of 1961, the Commissioner Group A shall be elected for a term of three (3) years. In the municipal election of 1962, the Commissioner Group B shall be elected for a term of three (3) years. In the municipal election of 1963, the Mayor shall be elected for a term of three (3) years, and the office of Mayor shall be up for reelection at three (3) year intervals~~

~~thereafter; the Commissioner Group D shall be elected for a term of two (2) years; and the Commissioner Group C shall be elected for a term of one (1) year. In the municipal election of 1964, the Commissioners Groups A and C shall be elected for terms of three (3) years each, and the offices of Groups A and C shall be up for reelection at three (3) year intervals thereafter. In the municipal election of 1965, the Commissioners Groups B and D shall be up for reelection at three (3) year intervals thereafter.~~ The regular town election for the four commission seats shall be the second Tuesday in March and each election year, thereafter, beginning in March of 2010. Such town elections shall be general elections. Electors shall vote for one qualified candidate amongst those Commissioners who appear on the ballot at that election and each successive election for the office of Commissioner. At any general election held under the provisions of this charter, the four Commissioner candidates who shall have received the four greatest number of votes cast shall be elected. Should two or more candidates for Commissioner receive the fourth greatest number of votes cast, those candidates shall be listed on a ballot for a run-off election which shall be held two weeks following the regular election for the office of Commissioner.

The regular town election for the Mayor shall be the second Tuesday in March of 2011. Such election shall be a general election. Electors shall vote for one qualified candidate amongst those candidates for Mayor who appear on the ballot. The candidate receiving the greatest number of votes cast shall be elected as the Mayor. In the event two or more candidates receive the same number of votes cast, then a run-off election pursuant to Section 17 of Article 16 shall be held two weeks after the original election to elect a candidate to fill the office of Mayor.

Section 4. Filling of vacancy on commission.
In the case of death, disability, resignation or removal of the Mayor or any member of the Town Commission, or in the event that a Commissioner or the Mayor ceases to remain a bona fide legal resident of the Town, a vacancy on the Town Commission shall exist, and such vacancy shall be filled by the appointment of a new temporary Commissioner by the remaining members of the Town Commission, until ~~an~~ the next election ~~can be held to fill such vacancy~~ for that office is . The election to fill the vacancy on the Commission shall be held within sixty (60) calendar days after the date of the death, disability, resignation, removal of the Mayor or Commissioner, or the change of legal residency of a Commissioner or the Mayor to a location outside the corporate limits of the Town, unless a general election of the Town of Lake Park is to be held within ninety (90) calendar days thereafter, whereupon such election may be combined with the general election. ~~No person specially appointed to fill the vacancy may be a candidate for the office to which he is appointed in the next following election to fill that office.~~

Section 3. Article 16, Section 17 of the Town Charter entitled "Run-off" is hereby amended to read as follows:

~~**Section 17. Run-off.**~~ **STRIKE THROUGH THE SECTION 17 AND RUN-OFF too**

~~Whenever a general or special election is held to fill any elective office, in the Town of Lake Park, the candidates receiving a majority of the votes cast at such election to fill such offices shall be declared to be duly elected; provided that in the event no candidates for a particular elective office~~

~~shall receive a majority of the votes cast at such election to fill such office, then a run-off election shall be held two (2) weeks after the original or special election to elect a candidate to fill such office; provided further that in such event only the names of the two (2) candidates having received the greatest number of votes in the general or special election for such office shall be submitted to the voters and the one receiving the majority number of votes in such run-off election shall be declared to be duly elected to such office; provided further that should two (2) or more candidates receive an equal number of votes to any such office so that it cannot be determined which two (2) had received the greatest and the next greatest number of votes, then the names of all such candidates shall be submitted at the run-off election and the candidate receiving the greatest number of votes at such election would be declared elected to such office.~~

Section 4. Article 16, Section 22 of the Town Charter entitled "Form of Ballot" is hereby amended to read as follows:

Section 22. Form of ballot.

That the official ballot (if ballot is used) to be used in all elections shall be substantially in the words, figures and form as follows; to wit:

OFFICIAL BALLOT
DATE____, YEAR _____
TOWN OF LAKE PARK, FLORIDA

Mark a Cross Mark (x) before the name of the Candidate ~~and/or Candidates~~ of your own choice

TABLE INSET:

For Commissioner, ~~Group D~~ (Vote for only one)
( ) JOHN DOE
( ) ~~RICHARD~~ CATHERINE DOE
( ) BOB WHITE
( ) ~~ROBERT~~ KELSEY LINK
( ) JOE SMITH

Section 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 6. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 7. Codification. The sections of the Ordinance may be made a part of the Town Code of Laws and Ordinances and may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 8. Effective Date. This Ordinance shall take effect immediately upon adoption.

TAB 6

Town of Lake Park Town Commission
Agenda Request Form

Meeting Date: January 6, 2010 Agenda Item No. 6

[ ] PUBLIC HEARING
[ ] Ordinance on Second Reading
[ ] Public Hearing

[ ] ORDINANCE ON FIRST READING

[ ] GENERAL APPROVAL OF ITEM

[ ] Other:

[X] **RESOLUTION**

[ ] DISCUSSION

[ ] BID/RFP AWARD

[ ] CONSENT AGENDA

SUBJECT: Street Lighting General Obligation Referendum Resolution

RECOMMENDED MOTION/ACTION: Approve resolution.

Approved by Town Manager _____ Date: 12/21/09

Anne M. Costello
Name/Title Finance Director

12/21/09
Date of Actual Submittal

Originating Department: Finance	Costs: $ **Funding Source:** Acct. #	**Attachments:** Resolution
Department Review: [X] Town Attorney [ ] Community Affairs ____ [ ] Community Development___	[X] Finance AMC [ ] Fire Dept _____ [ ] Library _____ [ ] Marina _____ [ ] PBSO _____	[ ] Personnel _____ [ ] Public Works_____ [ ] Town Clerk_____ [ ] Town Manager _____
Advertised: Date: _____ Paper: _____ [ ] Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone_____ or Not applicable in this case_____: Please initial one.

Summary Explanation/Background: Pursuant to the direction of the Town Commission at the regular meeting held November 4, 2009, this resolution authorizes a bond referendum to be held in the Town on March 9, 2009 to determine whether or not the residents of the Town want bonds issued in the principal amount of not to exceed $2.5 million dollars for implementation of a Street Lighting Project throughout the Town. This project includes the cost of installation of underground wiring for the street lights, LED fixtures and the removal of existing FPL lighting. Also included are design engineering and construction oversight costs. This amount is a not to exceed estimate of the cost of this project allowing for any unanticipated circumstances that may be encountered during the actual design of the Project. It is anticipated that the actual cost will be lower than $2.5 million.

RESOLUTION NO. 02-01-10

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS FOR THE PURPOSE OF FINANCING ALL OR A PORTION OF THE COSTS OF THE ACQUISITION AND INSTALLATION OF STREET LIGHTING TO BE OWNED BY THE TOWN OF LAKE PARK, FLORIDA IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING TWO MILLION FIVE HUNDRED THOUSAND DOLLARS ($2,500,000), CALLING FOR A BOND REFERENDUM OF THE QUALIFIED ELECTORS OF THE TOWN OF LAKE PARK TO BE HELD ON MARCH 9, 2010, AS TO WHETHER GENERAL OBLIGATION BONDS FOR SUCH STREET LIGHTING PROJECT SHOULD BE ISSUED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Constitution, the Town Charter and applicable laws of the State of Florida authorize and empower the Town of Lake Park, Florida (the "Town") to adopt this Resolution; and

WHEREAS, the Town Commission of the Town of Lake Park, Florida (the "Town Commission") has determined that the Town's street lighting system, currently leased from Florida Power & Light Company, is not adequate and is not a cost effective method of providing street lighting throughout the Town and that it is in the best interest of the Town and its residents for the Town to purchase and install its own street lighting system; and

WHEREAS, the Town Commission, based on the foregoing findings and studies performed by the Town's staff and consultants and based on requests for such action by the Town citizenry, believes that it is necessary to finance all or a portion of the cost of acquiring and installing Town owned street lighting throughout the Town, together with costs incidental thereto (the "Street Lighting Project"); and

WHEREAS, the Town Commission finds it to be in the best interest of the Town to issue its general obligation bonds (the "Bonds"), in one or more series, in the aggregate principal amount of not exceeding TWO MILLION FIVE HUNDRED THOUSAND DOLLARS ($2,500,000) for the Street Lighting Project, to finance all or a portion of the costs for such Street Lighting Project; and

WHEREAS, it is necessary and essential to call and to hold a bond referendum submitting the issuance of such Bonds for the approval or disapproval of the residents who are qualified electors within the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA THAT:

SECTION 1. Findings. The findings of the Town Commission set forth in the foregoing recitals are hereby adopted.

SECTION 2. Bond Referendum. A bond referendum is hereby ordered to be held in the Town on the 9th day of March, 2010 to determine whether or not there shall be issued the Bonds of the Town in the aggregate principal amount of not exceeding TWO MILLION FIVE HUNDRED THOUSAND DOLLARS ($2,500,000) for the Street Lighting Project maturing at such time or times not exceeding 20 years from the date or dates of issuance of said Bonds and bearing interest at a rate or rates not exceeding the legal maximum rate of interest. The Bonds will be issued for the purpose of financing the costs of the Street Lighting Project and to pay the costs of issuing the Bonds, together with all other costs incidental thereto, for which the full faith and credit of the Town shall be pledged. The payment of the principal of and interest on the Bonds shall be payable at such times and in such manner as shall be determined by subsequent proceedings of the Town Commission, and the Bonds shall be payable from ad valorem taxes levied and collected in the Town (without limitation as to rate or amount) on all taxable property in the Town sufficient to pay principal of and interest on such Bonds as the same become due and payable. The Town may, at its option, apply other legally available sources of revenues to the payment of the Bonds.

SECTION 3. Municipal Purpose. The Street Lighting Project will be for a valid municipal purpose and therefore, accordingly, subject to approval of the issuance of the Bonds by the qualified electors of the Town, the financing of the costs of the Street Lighting Project through the issuance of the Bonds is hereby authorized and approved.

SECTION 4. Street Lighting Project. The Street Lighting Project shall consist of the cost of acquiring and installing certain street lights located throughout the Town.

SECTION 5. One or More Series. The Bonds may be issued all at one time or in part from time to time as the Town Commission may in its discretion hereafter determine by subsequent proceedings.

SECTION 6. Voter Approval. Bonds shall not be issued for the Street Lighting Project unless such Bonds authorized for the Street Lighting Project shall be approved at the bond referendum by a majority of the qualified electors of the Town voting in such election all in the manner provided in the Constitution and the statutes of the State of Florida.

SECTION 7. Polling Locations. Polling locations or places shall be determined by the Supervisor of Elections for Palm Beach County, Florida, and all qualified electors of the Town who vote in said election shall vote at said designated polling places. The polls shall be opened on the date of said bond referendum from seven o'clock a.m. until seven o'clock p.m. on

the same day. Only the duly qualified electors of the Town will be permitted to vote in said bond referendum.

SECTION 8. Publication of Notice. The Town Clerk shall prepare and give notice of the bond referendum by causing appropriate Notice, to be published in accordance with the provisions of Sections 100.342 of the Florida Statutes, at least twice, once in the fifth week and once in the third week prior to the week in which the referendum is held, provided the first publication shall take place at least thirty (30) days before the date fixed for election in THE PALM BEACH POST, a newspaper of general circulation within the Town. The Town Clerk shall secure from the publisher of said newspaper an appropriate affidavit of proof that said Notice has been duly published, as herein set forth, and said affidavit shall be made a part of the record of the Town Commission.

SECTION 9. Voting Device. The vote at said bond referendum shall be by such voting device/equipment (the "Device"), as approved by the Florida Department of State pursuant to the Florida Election Code, comprising Chapter 101 of Florida Statutes, and in each polling place there shall be at least one such Device. It shall be the responsibility of the Supervisor of Elections for Palm Beach County, Florida, to have prepared and furnished to the inspectors said Devices in such numbers as shall be required to carry out the intent of this Resolution, and to have prepared and approved by the proper authorities for use in said Devices such ballots (or mechanical ballot record) as shall be necessary to conduct the election of the qualified electors of the Town relative to the question of whether the issuance of Bonds in the aggregate principal amount of not exceeding TWO MILLION FIVE HUNDRED THOUSAND DOLLARS ($2,500,000) shall be approved to finance the cost of the Street Lighting Project and to pay the costs of issuance of the Bonds, together with all other costs incidental thereto. Ballots in the same general form as hereinafter described shall be available to absentee voting.

SECTION 10. Form of Ballot. The ballot to be issued in said bond referendum shall be substantially in the following form:

OFFICIAL BALLOT

TOWN OF LAKE PARK, FLORIDA
STREET LIGHTING PROJECT

GENERAL OBLIGATION BONDS

Shall Town of Lake Park issue General Obligation Bonds not exceeding TWO MILLION FIVE HUNDRED THOUSAND DOLLARS ($2,500,000) at not exceeding the legal maximum interest rate or rates, maturing not later than 20 years from issuance, payable from Town's ad valorem taxes to finance the acquisition and installation of street lighting located throughout the Town, including costs incidental thereto, as described in Town Resolution No. 02-01-10.

Instructions to Voters: Indicate **"For Bonds"** if you favor the proposed Bond issue.

Indicate **"Against Bonds"** if you do not favor the Bond issue.

SECTION 11. Canvassing of Returns. The returns of the referendum shall be canvassed in the manner provided by law, and said returns shall be certified to the Town Commission, which shall declare the results thereof. Upon canvassing the returns of the referendum, the results of such referendum shall be recorded in the minutes of the Town Commission in the manner prescribed by law.

SECTION 12. Election in Accordance with Florida Law. Said bond referendum shall in all other respects be held and conducted in the manner provided in and by the laws of the State of Florida.

SECTION 13. Saving Clause. In the event that any word, phrase, clause, sentence or paragraph hereof shall be held invalid by any court of competent jurisdiction, such holdings shall not affect any other word, clause, phrase, sentence or paragraph hereof.

TAB 7

Town of Lake Park Town Commission
Agenda Request Form

Meeting Date: January 6, 2010 Agenda Item No. 7

[ ] PUBLIC HEARING
[ ] Ordinance on Second Reading
[ ] Public Hearing

[ ] RESOLUTION

[X] DISCUSSION

[ ] ORDINANCE ON FIRST READING

[ ] BID/RFP AWARD

[ ] GENERAL APPROVAL OF ITEM

[ ] CONSENT AGENDA

[ ] Other:

SUBJECT: Marina Paver Covering Options

RECOMMENDED MOTION/ACTION: Award Bid to Arch Enterprises, Inc.

Approved by Town Manager _____ **Date:** 12/21/09

Name/Title

Date of Actual Submittal

Originating Department: Town Manager	**Costs:** Funding Source: Acct. #	**Attachments:**
Department Review: [ ] Town Attorney_____ [ ] Community Affairs ____ [ ] Community Development___	[ ] Finance _____ [ ] Fire Dept _____ [ ] Library _____ [ ] *Marina* _____ [ ] PBSO _____	[ ] Personnel _____ [ ] Public Works_____ [ ] Town Clerk_____ [ ] *Town Manager* _____
Advertised: Date: _____ Paper: _____ [ ] Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone_____ or Not applicable in this case_____: Please initial one.

Summary Explanation/Background: On December 16, 2009 an agenda item recommending an award of a competitively bid contract to replace the interim paver cover at the marina was tabled by the Commission. The Commission requested to be provided with options that lasted longer than 12-18 months.

The existing paver covering was installed on an emergency basis by Miroma, Inc. in December 2007. In July 2009, Miroma, Inc. provided staff three options to repair/replace the existing paver covering. Option 1 was to replace the existing system with the same. Option 2 was to replace the existing system with 2"x 6" pressure treated planks, which would last between two and three years, and Option 3 which was to spot repair/replace the existing plywood and carpeting as needed.

Staff, the marine engineer and construction attorney discussed the paver covering in terms of determining how long it would be needed. The attorney stated that 18 to 24 months would be an adequate amount of time to complete the litigation.

Staff subsequently advertised the project for bid to replace the existing covering with like covering. Arch Enterprises, Inc. was the low bidder in the amount of $78,005.14. Staff recommended award of this bid at the December 16th Commission Meeting.

The alternative to install 2" x 6" pressure treated planks for an estimated amount of $125,800 is also an option, which would last approximately three years.

Miroma, Inc. also provided an option to replace plywood and carpet as needed. Staff and the engineer recommend against this option as it is not economical and will not be aesthetically pleasing.

Upon re-analyzing all options, staff and the engineer are still of the opinion that the most cost effective and prudent approach to this issue is to replace the existing paver covering system with a like system and award the contract to Arch Enterprises, Inc.

Cutcher & Associates, Inc.
Coastal Engineers

Voice: (561) 748-6746
Fax: (561) 748-6865
Email: depth@gate.net

752 North US Hwy 1.
Tequesta, FL 33469

August 24, 2009

Maria Davis – Town Manager
Town of Lake Park – Lake Park Marina
535 Park Ave.
Lake Park, FL 33403

RE: Interim Walkway Paver Cover

Maria:

At your request, we have evaluated the interim walkway paver cover at the marina. This letter serves as the report of that evaluation.

Overview:
The paver cover was installed to prevent injury to marina patrons due to the instability of the brick pavers and underlying soil. Prior to the installation of the paver cover, 53 separate areas along the brick paver alignment had been indentified as problematic (September, 2007). It was determined that paver brick instability issues and collapsed areas posed a significant potential for injury and should; therefore, be addressed temporarily until a comprehensive remediation was undertaken. The comprehensive remediation was to be dependent on the outcome of the construction deficiency mediation/litigation. At the time it was determined that the pavers posed a significant liability, it was estimated by the former legal counsel that the construction deficiency legal process should take approximately one year to complete. Based on this estimate from the former legal counsel, we provided a design which had an estimated service life of 12 - 14 months. As you know, the paver cover has been in place since January 2008.

As you may remember, the paver cover consists of approximately 485 sheets of 4' x 8' - 5/8" pressure treated plywood that is fastened to the concrete cap and selective bricks with Tapcon screws. A layer of indoor/outdoor carpet is stapled on top of the plywood as the walking surface. The sheets of plywood are further fastened together with galvanized hurricane clips. The specifics of the design are shown in the construction plans that were supplied to the Town in November 2007.

Present Condition:
Presently, the paver cover is in fair shape and displays moderate to excessive wear with several areas that require substantial maintenance. The overall condition of the paver cover is a function of the carpet and the supporting plywood and fasteners. Due to the presence of the carpet covering the plywood, it is difficult to directly assess the condition of the plywood continuously along the alignment. This being said, the plywood has exhibited twisting, cupping and delamination as a result of repeated wet/dry cycles. The twisting and cupping become more prevalent during the dry season. This is a result of the underside staying perpetually wet from ground condensate while the upper surface dries out. The imbalance of moisture on the two sides of the plywood causes the laminates to expand at different rates, thus creating internal strain. As the plywood experiences more wet/dry cycles, the layers in the plywood begin to delaminate or breakdown which reduces the strength and flexural rigidity. The observed result is twisting cupping and buckling. The effect is accumulative and the plywood will continues to deteriorate with time. Eventually, the plywood will create a tripping hazard. This will be more prevalent in the upcoming winter months when there is far less rainfall. The strain and buckling can be observed in the tendency to pull the Tapcon fasteners out of the concrete cap or in the lifting of the brick pavers. As more fasteners are loosened, the remaining fasteners will experience an increase in loading and will begin to fail at an accelerated rate.

The carpet which is fastened to the plywood exhibits substantial wear in high traffic areas such as the boat ramp and in front of frequently used slips. The carpet will continue to experience wear and will begin to tear or shred at these areas. Once the carpet starts to rip, tear or shred, it too will contribute to creating a tripping hazard.

It is difficult to estimate when the paver cover will no longer be functional or safe. These are somewhat subjective terms and the degree of deterioration is a function of both use and environmental conditions. It is safe to say that over the upcoming months, the potential for tripping hazards will increase due to dryer weather. It is also safe to say that the paver cover will not provide an additional year of service.

In consideration of the ongoing legal dispute over the marina deficiencies and the anticipated time to resolve these deficiencies, the paver cover will need to be replaced. The means by which this is accomplished and the associated cost will be partially dependent on the required service life. The required service life is obviously a function of the time required to reach resolution on the deficiencies.

The options are summarized below. These options do not include actual cost estimates as the variability in the design will be a function of the required service life. An actual cost estimate can be provided once the expected legal process is better defined.

Options:

1. **Do Nothing** – This will result in continued and accumulative degradation of the plywood and carpet. It is likely that the carpet and plywood will reach a point where one or more tripping hazards result. It is recommended that this option be avoided.

2. **Repair as Needed** – This will result in replacement of problematic sections on an ongoing basis. It would seem that this is a least cost approach; however, the repair will require that an undetermined amount of sections be removed and replaced. The removal and re-installation will result in a patchwork appearance with a limited increase in the service life. The repair will also require that adjacent section be partially removed to facilitate attachment to new sections. Furthermore, the interruption in marina operations may be considerable as the repairs will be an ongoing process.

3. **Replace as Existing** – This will likely provide the same service life as what is presently in place (12 – 18 months). The cost will likely be somewhat higher due to the fact that the present cover material will need to be removed and discarded. This is a substantial task as there are 485 sheets of plywood and approximately 3,000 fasteners to be removed. It is also recommended that the concrete cap be sealed prior to re-installation of any paver cover system. The sealing is recommended due to the extensive cracking of the concrete cap resulting from the absence of expansion joints in the original construction.

4. **Replace with Extended Service Life Materials** – This option considers the possibility of a protracted legal process over the construction deficiencies. Due to the unknown timeframe associated with the legal process, it is my recommendation that the design and material selection be dependent on a conservative estimate of the legal process. This time estimate should come from legal counsel. The cost for this option will be dependent upon the material selection and process of installation. It is safe to say that the cost could be substantially higher than the present paver cover design. Although this would seem to be a less than optimal choice, the time required for resolution of the construction deficiencies may be significant and the need for a long term paver cover may be indicated. The selection of materials and best value design should be conditional on the time estimate from legal counsel. Once a conservative estimate is agreed upon, we can prepare a table summarizing several design options. Additionally, the sealing of the concrete cap is recommended due to the extensive cracking resulting from the absence of expansion joints in the original construction.

Summary

The brick paver cover installation was required due to the excessive number of depressions and collapsed brick pavers. The pave cover was installed to reduce the potential for tripping or injury to the marina patrons and general public. The paver cover was designed for a 12 - 14 month service life and has now been in service for 19 months.

The paver cover is showing signs of significant wear. The wear includes twisting, cupping and delamination of the plywood sheets as well as tears in the carpet. If the paver cover is not replaced or repaired, tripping hazards will result. The symptoms of wear will become more prevalent as the rain decreases over the next six months.

It is recommended that options 1 and 2 be avoided for the reasons presented. The choice of options 3 or 4 should be a function of a conservative estimate of the time required to resolve the marina deficiencies through the legal process.

A cost estimate for several design options can be prepared once a conservative time estimate is provided by legal counsel.

Should you have any questions with regards to this letter, please do not hesitate to contact me.

Sincerely,

Robert Cutcher

Robert Cutcher, P.E.

Cc: Joe Downes
John Downes

CUTCHER AND ASSOCIATES, INC.
Coastal Engineers

Voice: (561) 748-6745
Fax: (561) 748-6865
E-Mail: depth@gate.net

752 North US Highway 1
Tequesta, FL 33469
Certificate of Authorization #8641

December 21, 2009

Maria Davis – Town Manager
Town of Lake Park
535 Park Avenue
Lake Park, FL 33403

Maria:

Re: Anticipated Service life – Recommended approach per plans and specs 12 to 18 months with possible two years at the outside.

Per Miroma:

Option#1:
This option uses higher grade carpet but conventional PT plywood. Estimated 18 months to two years.

Option #2
This option uses a higher grade carpet and PT planking. Estimated two to three years

Option #3
Less than three months. I strongly do not recommend this option.

Recommendation per anticipated litigation and as per attorney recommendation for prepared plans and specs, I recommend awarding the bid to Arch Enterprises as per bid proposal.

Sincerely,

Robert Cutcher

Robert Cutcher, P.E.

MIROMA, Inc.

11369 167th Place N. Jupiter, Fl. 33478 Phone: (561) 745-4808 Fax: (561) 748-6730

CRUTCHER ASSOCIATES

561 748-6745 F 748-6865

LAKE PARK MARINA
PLYWOOD WALKWAY
REPAIR OPTIONS
LAKE PARK, FL.

LAK-002
7-07-09

MIROMA INC. Hereby proposes to perform the labor and supply the materials necessary for the completion of work indicated and described herein. Work will be performed for the sum of **$117,200.00.**
***Price does not reflect +- $3200 direct purchase savings.

WALKWAY REPAIR OPTION 1

Included:

- Permit
- Remove existing carpet and plywood, ~~clean plywood for reuse (staples, screws, etc.)~~
- Reinstall plywood with 3/8x3 tap cons @ 12" oc and new turf (see sample)
  ** ALT install turf with aluminum angle screwed on edges of plywood and tap cons 4' oc
- ~~Replace damaged plywood as needed (allowance for 30 pieces included)~~
- Add 2x6 curb along west side where walkway edge is on pavers, not concrete
- Protect areas from pedestrian traffic during construction
- Lumber, carpet
- Hardware (Tap cons, nails, screws, etc.)
- Clean-up, trash removal

Not Included:

- Paver repair
- Walkway removal after completion of project

Extra work will be charged at $50.00/hour, plus material.
Owner to supply all materials not specifically listed above.

All materials to be as specified and the work to be performed in a workmanlike manner in accordance with the specifications listed above. Any alteration or deviation from the above specifications involving extra costs will be executed only upon written order and will become an extra charge over and above the estimate.

PAYMENTS to be made on a bi-weekly draw basis in accordance with work completed and materials supplied. Complete and final is payment due within thirty days of job completion.

ACCEPTANCE OF PROPOSAL

The stated prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Signature_____ Date_____

This proposal may be withdrawn if not accepted within 30 days.

MIROMA, Inc.

11369 167th Place N. Jupiter, Fl. 33478 Phone: (561) 745-4808 Fax: (561) 748-6730

CRUTCHER ASSOCIATES

561 748-6745 F 748-6865

LAKE PARK MARINA
PLYWOOD WALKWAY
REPAIR OPTIONS
LAKE PARK, FL.

LAK-002
7-07-09

MIROMA INC. Hereby proposes to perform the labor and supply the materials necessary for the completion of work indicated and described herein. Work will be performed for the sum of **$125,800.00.**
***Price does not reflect +- $3500 direct purchase savings.

WALKWAY REPAIR OPTION 2

Included:

- Permit
- Remove existing carpet and plywood
- Install 2x6 #1 pt deck with 3/8x 3" tap cons in place of plywood and carpet decking to be attached at ends only (interior connection to be determined)
- Extend deck on west side where walkway edge is on pavers to concrete
- Add concrete edge around trees and utilities on west side
- Protect areas from pedestrian traffic during construction
- Lumber
- Hardware (Tap cons, nails, screws, etc.)
- Clean-up, trash removal

Not Included:

- Paver repair
- Walkway removal after completion of project
- Interior connection (to be determined)

Extra work will be charged at $50.00/hour, plus material.
Owner to supply all materials not specifically listed above.

All materials to be as specified and the work to be performed in a workmanlike manner in accordance with the specifications listed above. Any alteration or deviation from the above specifications involving extra costs will be executed only upon written order and will become an extra charge over and above the estimate.

PAYMENTS to be made on a bi-weekly draw basis in accordance with work completed and materials supplied. Complete and final is payment due within thirty days of job completion.

ACCEPTANCE OF PROPOSAL

The stated prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Signature_____ Date_____

This proposal may be withdrawn if not accepted within 30 days.

MIROMA, Inc.

11369 167th Place N. Jupiter, Fl. 33478 Phone: (561) 745-4808 Fax: (561) 748-6730

CRUTCHER ASSOCIATES

561 748-6745 F 748-6865

LAKE PARK MARINA
PLYWOOD WALKWAY
REPAIR OPTIONS
LAKE PARK, FL.

LAK-002
7-07-09

MIROMA INC. Hereby proposes to perform the labor and supply the materials necessary for the completion of work indicated and described herein. Work will be performed for the sum of **$12,500.00.**
*** Price does not reflect +- $150 direct purchase savings.

WALKWAY REPAIR OPTION 3

Included:

- Permit
- Remove damaged carpet and plywood
- Allowance for plywood is 30 pcs., and carpet is 180 lineal feet
- Reinstall plywood with 1/4" tap cons @ 12" oc and new carpet (match existing)
- Add 2x6 curb along west side where walkway edge is on pavers, not concrete
- Add up to 200 tap cons (1/4x2 3/4) at various locations as directed
- Protect areas from pedestrian traffic during construction
- Lumber, carpet
- Hardware (Tap cons, nails, screws, etc.)
- Clean-up, trash removal

Not Included:

- Paver repair
- Walkway removal after completion of project

Extra work will be charged at $50.00/hour, plus material.
Owner to supply all materials not specifically listed above.

All materials to be as specified and the work to be performed in a workmanlike manner in accordance with the specifications listed above. Any alteration or deviation from the above specifications involving extra costs will be executed only upon written order and will become an extra charge over and above the estimate.

PAYMENTS to be made on a bi-weekly draw basis in accordance with work completed and materials supplied. Complete and final is payment due within thirty days of job completion.

ACCEPTANCE OF PROPOSAL

The stated prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Signature_____ Date_____

This proposal may be withdrawn if not accepted within 30 days.

Town of Lake Park Town Commission
Agenda Request Form

Meeting Date: December 16, 2009 Agenda Item No. Tab 5

[ ] PUBLIC HEARING
[ ] Ordinance on Second Reading
[ ] Public Hearing

[ ] ORDINANCE ON FIRST READING

[ ] GENERAL APPROVAL OF ITEM

[ ] Other:

[ ] RESOLUTION

[ ] DISCUSSION

[ ] BID/RFP AWARD

[X] **CONSENT AGENDA**

SUBJECT: Recommendation of Award to Arch Enterprises, Inc. to Replace Interim Paver Cover at the Marina in the Amount of $78,005.14

RECOMMENDED MOTION/ACTION: Approve

Approved by Town Manager _____ Date: 12/8/09

Name/Title

Date of Actual Submittal

Originating Department: Town Manager	**Costs: $78,005.14** Funding Source: **Marina Construction Deficiency Account** Acct. #	**Attachments:** **Bid Tabulation Sheet** **Letter from Engineer** **Contract and Front End Documents**
Department Review: [ ] Town Attorney_____ [ ] Community Affairs ____ [ ] Community Development___	[ ] Finance _____ [ ] Fire Dept _____ [ ] Library _____ [ ] Marina _____ [ ] PBSO _____	[ ] Personnel _____ [ ] Public Works_____ [ ] Town Clerk_____ [ ] Town Manager _____
Advertised: Date: _____ Paper: _____ [ ] Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone_____ or Not applicable in this case_____: Please initial one.

Summary Explanation/Background: On December 19, 2009 the Town Commission approved an emergency contract to construct a plywood and carpet covering for the brick paver walkway adjacent to the seawall at the marina. This was required as a safety measure due to

construction deficiencies in the newly built bulkhead wherein the pavers continue to be undermined. The Town's Marine Engineer designed this temporary safety measure as an interim plan until the construction deficiencies could be resolved through the legal system. The engineer estimated that the temporary paver covering would last 12 to 18 months. It has been installed for two years, and is now in dire need of replacement.

The Engineer prepared plans and specifications and advertised for formal bidding of the project. Four companies bid on the project with bids ranging from $77,800 to $84,303. The low bidder was Miroma, Inc. with a bid of $77,800. When contacted, Miroma, Inc. stated that they could not complete the work within the specified time as a result of a prior commitment. They also stated that they were agreeable to waiving the bid award as a result.

Staff and the engineer are recommending award to the second low bidder, Arch Enterprises, Inc. in the amount of $78,005.

Minutes
Town of Lake Park, Florida
Interim Paver Cover Walkway – Generation II
November 23, 2009, 11:00 a.m.
Commission Chamber, Town Hall, 535 Park Avenue

The Interim Paver Cover Walkway Bid Opening was conducted on Monday, November 23, 2009 at 11:02 a.m. Present were Robert Cutcher of Cutcher and Associates, Project Consultant, and Town Clerk Vivian Lemley.

Town Clerk Vivian Lemley called the meeting to order at 11:02 a.m. She explained that four (4) bids had been received for the project.

Company	Address	Total Bid
Miroma. Inc.	11369 167th Place N. Jupiter, FL 33478 561-745-4808 561-748-6730 fax	$77,800
Palm Beach Marine	1410 Forsythe Road West Palm Beach, 33405 561-588-7690 561-697-3238 fax	$ 84,303
Arch Enterprises Inc.	145 Monterey Point Rd Palm Beach Gardens, 33418 561-718-5331 561-625-5316 fax	$ 78,005.14
Palm Beach Building Group	8927 Hypoluxo Rd A-4 #226 Lake Worth, 33467 561-499-3603 561-499-3651 fax	$ 81,700

A review of the bid packages will be conducted to ensure all the required documentation are included. The Town Commission will be given a recommendation for approval.

Vivian Lemley thanked everyone for being present.

ADJOURNMENT:

With no other Bids, the opening of Bid 07-2009 was closed at 11:08 a.m.

Town Clerk Vivian Lemley

Cutcher & Associates, Inc.
Coastal Engineers

Voice: (561) 748-6746
Fax: (561) 748-6865
Email: depth@gate.net

752 North US Hwy 1.
Tequesta, FL 33469

December 2, 2009

Marla Davis – Town Manager
Town of Lake Park – Lake Park Marina
535 Park Ave.
Lake Park, FL 33403

RE: Lake Park Harbor Marina Interim Paver Cover Generation 2 - Recommendation of Project Award

Marla:

The bid opening for the Interim Paver Cover Generation 2 was held on November 23, 2009 at 11:00 AM. The apparent low bidder was Miroma, Inc. with a bid value of $77,800.00. I contacted Miroma to determine the start and completion dates prior to recommending the contract award to them. Miroma stated that they could not complete the work within the specified time as a result of a prior commitment. Miroma stated that they were agreeable to waiving the bid award as a result.

Therefore, I recommended that the next lowest bid of $78,005.14 from Arch Enterprises, Inc. be considered, which you agreed with. I contacted Arch enterprises to discuss the situation and request a start and completion date. This was consistent with the request made to Miroma, Inc. As documentation of this, I sent an email to Arch Enterprises which included a start and completion date blank. They completed the email and returned via fax. That fax is attached as reference.

In consideration of the minor difference in price and the ability of Arch Enterprises to complete the work in an acceptable time frame, I recommend that Arch Enterprises, Inc. be awarded the contract for the Interim Paver Cover Generation project. They are able to begin work on or about December 17, 2009 assuming that the contract is executed.

Should you have any questions with regards to this letter, please do not hesitate to call me.

Sincerely,

Robert Cutcher

Robert Cutcher, P.E.

charles zatrepalek

From: Robert Cutcher [depth@gate.net]
Sent: Wednesday, November 25, 2009 3:21 PM
To: 'charles zatrepalek'
Cc: 'Maria Davis'; 'Vivian Lemley'; 'Roxann Stoble'
Subject: Paver Cover Bid: LAK - 002B
Importance: High

Charles,

As we discussed on the phone, Miroma, the apparent low bidder is unable to meet the required construction schedule. This information was provided by Miroma, the apparent low bidder. Therefore, Arch Enterprises, Inc. is now the apparent low bidder for the project. The Town of Lake Park will be having a Commission meeting on December 16, 2009. The contract award for the identified bid is an agenda item for the meeting of the 16th

As part of the agenda item, a letter of recommendation for award from the engineer will be submitted. So that I can prepare the letter of recommendation, **please provide the start and finish dates in the spaces below along with your initials.** Please understand that it is important that the project be completed in neat and expeditious manner so as to minimize inconvenience to the marina patrons. You may fax the completed email back to the number below.

12 Dec or Sooner with A Contract

Start date

Finish date
27 Working Days
21 JAN 2010

Thank you for your consideration in this manner.

Please contact me with any questions.

Sincerely,

Robert Cutcher, P.E

Cutcher & Associates, Inc.
Coastal Engineers
752 US Hwy 1

11/25/2009

EJCDC
STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is dated as of the 17 day of December, 2009, and between the Town of Lake Park (hereinafter called OWNER) and Arch Enterprises, Inc. (hereinafter called CONTRACTOR).

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

1. Purchase and mobilization of all equipment, all materials and all labor to needed to perform the work in it's entirety.
2. Removal of existing paver cover system and disposal of said cover in an approved manner. This includes all fees for transport and disposal.
3. Installation of PT plywood, indoor/outdoor carpet, fasteners, hardware and timber as per the drawings and specifications as listed in the contract documents (Article 8).
4. Site clean, restoration and demobilization of all equipment, all leftover materials, waste and all labor needed to perform the work in it's entirety.

The project location is on the western shore of the ICWW in Lake Park, Florida. The work includes all materials, labor and equipment to complete the project in accordance with the plans and specifications.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

The Town of Lake Park Marina - Interim Paver Cover Second Generation

Article 2. ENGINEER.

The Project has been designed by

Cutcher & Associates Inc.
Coastal Engineers
752 US Hwy 1
Tequesta, Florida 33469

who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES.

3.1 The Work shall be substantially completed on or before January 18, 2010 and all Work be completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions on or before January 21, 2010 .

Article 4. CONTRACT PRICE.

4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 4.2 below:

4.2 For Work related to items 4.1 : a Lump Sum of:
seventy eight thousand and five dollars and fourteen cents — $78,005.14
(use words) — (figures)

All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.8 of the Standard General Conditions:

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the Standard General Conditions. Applications for Payment will be processed by ENGINEER as provided in the Standard General Conditions.

5.1 Progress Payments. OWNER shall make one (1) progress payment on account of the Contract Price for the work on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER as provided in Article 14 of the Standard General Conditions. This progress payment is provisional on purchase of all required materials by the CONTRACTOR and staging of all said materials at the progect site. The application for the progress payment shall not exceed 25% of the total contract price ($17,501.28) and is NOT dependent upon the actual cost of said materials.

5.2. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by the ENGINEER as provided in said paragraph 14.1.3.

Article 6. INTEREST.

All moneys not paid when due as provided in Article 14 of the Standard General Conditions shall bear interest at Six percent (6%) simple interest per annum.

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

7.1. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Construction Drawings and Technical Specifications.

7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

7.4. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.

7.5. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.6. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

8.1. This Agreement (pages 1 to 5 inclusive).

8.2. Exhibits to this Agreement (pages)

8.3. Performance, Payment, and other Bonds, consisting of _____ pages (may be waived due to limit of contract price).

8.4. Notice to Proceed.

8.5. Standard General Conditions (pages 1 to 67 inclusive).

8.6 Intentionaly omitted

8.7 Drawings consist of one set construction plans. These are specific to the work as described previously and are titled as follows:

THE TOWN OF LAKE PARK MARINA – INTERIM PAVER COVER SECOND GENERATION

8.8. Addenda numbers ____ to ____, inclusive.

8.9. Intentionally omitted

8.10. Documentation submitted by CONTRACTOR prior to Notice of Award (pages ____ to ____, inclusive).

8.11 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.4 and 3.5 of the General Conditions.

The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in Paragraphs 3.5 and 3.6 of the General Conditions.

Article 9. MISCELLANEOUS.

9.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2. No assignments by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation moneys, that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

9.4. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.5. OTHER PROVISIONS (none)

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on December 17, 2009 (which is the Effective Date of the Agreement).

OWNER Town of Lake Park

By:

[CORPORATE SEAL]

Attest

Address for giving notices

Ms. Maria Davis – Town Manager

Town of Lake Park

535 ParkAve.

Lake Park, Florida 33403

CONTRACTOR Arch Enterprises, Inc.

By:

[CORPORATE SEAL]

Attest

Addresses for giving notices

Charles Zatrepalek

145 Monterey Point Drive

Palm Beach Gardens, FL 33418

(561) 718 - 5331

License No. CGC034041

Agent for service of process:

(If CONTRACTOR is a corporation, of authority to sign.)

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

ACEC
AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASCE American Society of Civil Engineers

National Society of Professional Engineers
Professional Engineers in Private Practice

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Endorsed by

CONSTRUCTION SPECIFICATIONS INSTITUTE

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These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*—The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

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12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*—See Paragraph 11.01 for definition.

17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*—The individual or entity named as such in the Agreement.

20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*—Sections of Division 1 of the Specifications.

22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

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27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*—Polychlorinated biphenyls.

31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.

37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

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40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.

46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.

47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. *Unit Price Work*—Work to be paid for on the basis of unit prices.

50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

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addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 *Terminology*

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

a. does not conform to the Contract Documents; or

b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

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E. *Furnish, Install, Perform, Provide:*

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

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2.04 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on

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Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

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3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work*: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work*: If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation , (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

   a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or

   b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

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1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and

2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

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4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

   a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

   b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

   a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

   b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and

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contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all such information and data;

b. locating all Underground Facilities shown or indicated in the Contract Documents;

c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the

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consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

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C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

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H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also

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meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.

E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

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a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

6. include completed operations coverage:

a. Such insurance shall remain in effect for two years after final payment.

b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

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5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;

2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors,

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members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

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1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's

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interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

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B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

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2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and

3) it has a proven record of performance and availability of responsive service.

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times; and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,

b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

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c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services; and

4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be

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required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor

2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner,

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Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

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6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought

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by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and

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shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is

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required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

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2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

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6.19 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

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B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

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E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

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B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

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8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or

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continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

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9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not

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exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

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10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

A. *Engineer's Decision Required*: All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data

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shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action*: Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part;

2. approve the Claim; or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

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1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

   a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

   b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

   c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of

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said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not

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limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 *Allowances*

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances:*

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance:*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to

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the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

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C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

   a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

   b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

   c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

   d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

   e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

   f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or

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neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

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13.03 *Tests and Inspections*

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

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C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

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1. repair such defective land or areas; or

2. correct such defective Work; or

3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

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13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an

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Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

   a. the Work has progressed to the point indicated;

   b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and

   c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or

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involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

   a. to supervise, direct, or control the Work, or

   b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

   c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

   d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

   e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

   a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

   b. the Contract Price has been reduced by Change Orders;

   c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

   d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. *Payment Becomes Due:*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

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D. *Reduction in Payment:*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

   a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

   b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

   c. there are other items entitling Owner to a set-off against the amount recommended; or

   d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before

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final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

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4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

   a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;

   b. consent of the surety, if any, to final payment;

   c. a list of all Claims against Owner that Contractor believes are unsettled; and

   d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying

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documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

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ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's repeated disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when

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so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days

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to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or

2. agrees with the other party to submit the Claim to another dispute resolution process; or

3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

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1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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