



AGENDA

Lake Park Town Commission
Town of Lake Park, Florida
Regular Commission Meeting
Wednesday, March 12, 2008, 7:30 P.M.
Lake Park Town Hall
535 Park Avenue

Paul Castro	—	Mayor
Edward Daly	—	Vice-Mayor
G. Chuck Balius	—	Commissioner
Jeff Carey	—	Commissioner
Patricia Osterman	—	Commissioner
.....		
Maria V. Davis	—	Town Manager
Thomas J. Baird, Esq.	—	Town Attorney
Vivian Mendez	—	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. **COMMISSIONER COMMENTS, TOWN ATTORNEY, TOWN MANAGER:**

- H. **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 in the rear of the Chambers and give it to the Town Clerk. Cards must be submitted before the item is discussed.

For Approval:

1. Regular Commission Meeting Minutes of February 6, 2008 Tab 1
2. Regular Commission Meeting Minutes of February 20, 2008 Tab 2
3. Professional Engineering Services to Develop a Fee Schedule for the Town's Stormwater Utility Tab 3
4. Resolution No. 16-03-08 Solid Waste Authority Interlocal Agreement Tab 4
5. Authorization for a Change Work Order to Decrease the Bayberry Drainage Improvements Contract by \$5,1000 (net) Tab 5
6. Award of Contract for Final Phase of Seawall Replacement at Lake Shore Park to Vance Construction Tab 6

I. **PUBLIC HEARING(S)**

RESOLUTION(S):

QUASI-JUDICIAL HEARING:

7. RESOLUTION NO. 17-03- 08 Twiggs

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, APPROVING A SITE PLAN FOR THE CONSTRUCTION OF A 3,168 SQUARE FOOT CHILD DAY CARE FACILITY SUBJECT TO CONDITIONS OF APPROVAL, TO BE LOCATED ON AN 0.601 ACRE OF PROPERTY, OWNED BY TWIGGS LEARNING TREE CHILD CARE, INC., AND LOCATED ON THE NORTHEAST CORNER OF SILVER BEACH ROAD AND 10TH STREET IN THE TOWN OF LAKE PARK, FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE. Tab 7

J. **DISCUSSION AND POSSIBLE ACTION:**

8. Marina Patio Covering Tab 8

K. **ADJOURNMENT:**

Consent Agenda

TAB 1

**Town of Lake Park Town Commission
Agenda Request Form**

Meeting Date: March 12, 2008

Agenda Item No. *Tab 1*

- | | |
|---|--|
| <input type="checkbox"/> PUBLIC HEARING
<input type="checkbox"/> Ordinance on Second Reading
<input type="checkbox"/> Public Hearing

<input type="checkbox"/> ORDINANCE ON FIRST READING

<input type="checkbox"/> GENERAL APPROVAL OF ITEM

<input type="checkbox"/> Other: | <input type="checkbox"/> RESOLUTION

<input type="checkbox"/> DISCUSSION

<input type="checkbox"/> BID/RFP AWARD

<input checked="" type="checkbox"/> CONSENT AGENDA |
|---|--|

SUBJECT: Regular Commission Meeting Minutes of February 6, 2008.

RECOMMENDED MOTION/ACTION: Approve the Minutes from the Regular Commission Meeting of February 6, 2008.

Approved by Town Manager *[Signature]* Date: *2/28/08*
Approved by TM Maria Davis
 Deputy Clerk *[Signature]* Date of Actual Submittal: *2/22/08*

Originating Department: Town Clerk	Costs: \$ N/A Funding Source: Acct. #	Attachments: Application, memo
Department Review: <input type="checkbox"/> City Attorney <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input checked="" type="checkbox"/> Town Clerk <i>[Signature]</i> <input type="checkbox"/> Town Manager _____
Advertised: Date: _____ Paper: _____ <input type="checkbox"/> 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 <input checked="" type="checkbox"/> _____: Please initial one.

Summary Explanation/Background:



Minutes
Town of Lake Park, Florida
Regular Commission Meeting
February 6, 2008 7:30 p.m.

Town Commission Chambers, 535 Park Avenue

The Town Commission met for the purpose of a Regular Commission Meeting on Wednesday, February 6, 2008 at 7:30 p.m. Present were Mayor Castro, Vice-Mayor Daly, Commissioners Balius, Carey, and Osterman, Attorney Karen Roselli, Human Resources Director Bambi-McKibbon-Turner and Town Clerk Vivian Mendez. Town Manager Maria Davis was absent.

Vivian Mendez led the Invocation.
Mayor Castro led the Pledge of Allegiance.
Town Clerk Vivian Mendez performed the Roll Call.

ADDITIONS/DELETIONS/APPROVAL OF AGENDA

Commissioner Comments was moved to be performed before Proclamations. Discussion items #10 and #11 were deferred to the next meeting.

Motion: A motion was made by Commissioner Balius to approve the Agenda as modified; Vice-Mayor Daly made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balius	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

PROCLAMATIONS

Honoring Molly Phillips

Motion: A motion was made by Commissioner Osterman to approve the Proclamation to Molly Phillips; Commissioner Balius made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner			

Balius	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

Mayor Castro read the Proclamation.

Diane Sophinos accepted the Proclamation on behalf of Molly Phillips. She stated that Ms. Phillips had contacted her that afternoon and asked her to accept the proclamation on her behalf and to express her gratitude to the staff, coworkers, residents and young children of Lake Park.

Honoring Patricia Barnes – Deferred to the next Commission Meeting.

Honoring Joan Miller of Palm Beach Ballet Center, Inc.

Motion: A motion was made by Commissioner Osterman to approve the Proclamation to Joan Miller of Palm Beach Ballet Center, Inc.; Commissioner Balius made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balius	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

Mayor Castro read the Proclamation.

Ms. Miller accepted the Proclamation and thanked the Commission. She gave a brief history of the Ballet Center.

Honoring Helga Watta of Park Avenue Tailor, Inc.

Motion: A motion was made by Commissioner Osterman to approve the Proclamation to Helga Watta of Park Avenue Tailor, Inc.; Commissioner Balius made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balias	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

Mayor Castro read the Proclamation.

Ms. Watta accepted the Proclamation and thanked the residents of the Town and the Commission.

COMMENTS BY COMMISSION, TOWN MANAGER, TOWN ATTORNEY

Mayor Castro stated that he had decided not to run for Mayor. The decision was made in August of last year. It was a well thought out decision that he had made with his wife and children. He stated that it was stated in the Weekday that he announced that he was running for Mayor again which he never announced in a Public Meeting. A few weeks later it was announced that he was backing out of the race for fear of a challenge. He stated that he has never walked away from a challenge. He expressed disappointment over the inaccuracies, untruths, and hearsay reported in the Weekday. He stated that he was proud to sit with the Commission as Mayor and that he was sad to leave. He was very proud of how the Commission handled the hurricanes, budget, and surpluses over the past years. He stated that he was very proud of the community. He thanked the residents of the Town of Lake Park for allowing him to serve as their Mayor.

Commissioner Carey stated that \$15,000 would be needed for the Kelsey Irish Fest. He asked if the Town could match a donation of half the money needed if someone contributed the rest.

Mayor Castro stated the Town was in a position where employees are concerned about their benefits. He was concerned over the possibility of lay offs as an impact from the last referendum by the State.

Commissioner Carey stated that the funds could come from the Town's Contingency Fund.

Mayor Castro recommended that the Irish Fest be discussed as an agenda item at the next Commission Meeting.

Commissioner Osterman asked Commissioner Carey if he had personally spoken to business owners regarding sponsorship of the Kelsey Irish Fest.

Commissioner Carey stated that he had not.

Commissioner Osterman recommended that Commissioner Carey introduce himself to and speak to business owners. She stated that she would also like to see the Irish Fest but the Town was at the point where they may not be able to have the Fireworks Festival.

Vice-Mayor Daly stated that doing without those festivals was an unfortunate consequence of what the people voted for.

Mayor Castro stated that he would rather cut recreational activities than services or benefits for the Town's employees.

Commissioner Balius stated that he has been with the Commission since 1991. He stated that Mayor Castro was the best Mayor that the Town has had.

Mayor Castro thanked Commissioner Balius.

Commissioner Balius stated that there would need to be budget cuts as a result of the Double Homestead Exemption vote.

Vice-Mayor Daly stated he would've liked to see the Mayor stay because the Town was coming upon critical times. He stated that he was sorry to see the Mayor go and that he was a good man for the job. He stated that Governor Crist made a poor choice in pushing the Double Homestead Exemption vote.

Commissioner Osterman thanked Mayor Castro for his service on the Commission. She wished Commissioner Carey and his wife good luck on the birth of their new baby. She stated that the tax situation will be tough and it would be an approximate loss of \$500,000. She stated that recreational activities were already cut and more may need to be cut. She announced that the Palm Beach County Sheriff's Office was starting a PAL basketball league for 11 to 14 year old boys and would be called the Lake Park Lions. She stated that uniforms would be provided and anyone interested could stop by the station on 6th St. or contact Corporal Mancino at 561-841-1993. She stated that information would also be posted on the website.

Mayor Castro stated that most residents believe that municipalities are fat and wasteful in their spending. He stated that they do not understand that a municipality's funds provide services such as Fire Rescue and Police to a community.

Commissioner Balius stated that 72% of the Town's budget was salaries and after all recreational activities are cut they would have to cut employees.

Mayor Castro stated that the Town would work hard to not cut any employees.

Town Manager Maria Davis
Absent

Bambi McKibbon-Turner stated that Town Manager Maria Davis asked her to deliver the following comments on her behalf. She stated that as a result of the budget cuts it was necessary

to reduce the Town Library's operation hours to Mondays and Tuesdays 9 am to 7 pm, Wednesday thru Saturday, 9 am to 5 pm and closed on Sunday. The new hours had been posted at the Library and on the Library's website. She announced that a new Palm Beach Post Job Search kiosk had been installed at the Library. It would enable job seekers to access actual job listings by using a computer touch screen to print out job listings. It would be a free service that was posted on the Library's website. The Library would receive statistics on the usage of kiosk. She stated that it had been installed on January 24, 2008 and from January 24th thru the 31st there had been 110 kiosk users, 918 jobs viewed, 9 job applications, 70 print outs, 101 videos viewed and 11 e-mailed jobs.

The March 5, 2008 Commission Meeting conflicts with Palm Beach County Days in Tallahassee. She stated that she was seeking consensus to reschedule the meeting.

Mayor Castro stated that the March 5, 2008 meeting would be his last Commission Meeting.

Commissioner Osterman recommended that the meeting be held the last week of February.

Discussion ensued between the Commission regarding the rescheduling of the March 5, 2008 Commission Meeting.

The Commission came to consensus to have the March Commission Meetings on March 12 and March 26, 2008.

Bambi McKibbon-Turner stated that irrigation was complete and sodding had commenced for the Ilex Park Project. The clock tower was being painted.

Mayor Castro objected to a song that he heard being played at the clock tower one day while dropping his daughter off at school.

Bambi McKibbon-Turner stated that she would make Town Manager Maria Davis aware that he was displeased with the song.

Commissioner Balius stated that the reason Town Manager Maria Davis was absent was because of the death of her brother.

Town Attorney Karen Roselli

None

PRESENTATION

Introduction of Newly Assigned Battalion Chief Ron Beesley to Station 68

Mayor Castro introduced and congratulated the new Battalion Chief Ron Beesley.

Battalion Chief Ron Beesley introduced himself and thanked the Commission. He stated that the Battalions in Palm Beach County had been restructured. He gave a brief background and description of his duties and the Battalions of Palm Beach County. He stated that he was part of the lobbying team in Tallahassee for tax reform as it pertained to Fire Rescue. He explained what he and the other Battalions were doing with regards to strategies in response to tax reform.

Vice-Mayor Daly stated that he would like Chief Beesley to contact Town Manager Maria Davis and speak to her regarding having more contact and a better relationship between the Town and the men in the Battalions.

PUBLIC and OTHER COMMENT

Merilee Tutcik, Lake Park – stated that she was glad to see the Clock Tower playing music again. She stated that the choice of music was a little over the top. She asked for a status on the One Park Place Project and Park Avenue Barbeque.

Attorney Karen Roselli stated that foreclosure proceedings had begun on the One Park Place property.

BOARD APPOINTEES

The following persons were appointed to the Planning and Zoning Board:

- Tim Stevens – Regular Member
- Robin Maibach – 1st Alternate Member
- Mason Brown – 2nd Alternate Member

CONSENT AGENDA:

1. Regular Commission Meeting Minutes of December 19, 2007
2. Regular Commission Meeting Minutes of January 16, 2008
3. Resolution No. 08-02-08 Poll Workers for March 11, 2008 Election
4. Resolution No. 09-02-08 Assistant Dock Master Position
5. Resolution No. 11-02-08 International City/County Management Association Retirement Corporation (ICMA)
6. Corradino Group Contract Extension for 90 days to Prepare the EAR Based Amendment to the Lake Park Comprehensive Plan
7. Proclamation for The Arc of Palm Beaches

Public Comment Open.

None

Public Comment Closed.

Mayor Castro pulled items 4 and 6 from the Consent Agenda for discussion.

Motion: A motion was made by Commissioner Balius to approve the Consent Agenda with the exception of items 4 and 6; Vice-Mayor Daly made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balius	X		
Commissioner Carey	X		

Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

Mayor Castro asked for an explanation of Resolution No. 09-02-08 Assistant Dock Master Position.

Bambi McKibbon-Turner explained the reason for Resolution No. 09-02-08 was that the current Ship Store Clerk was performing the duties of a dock attendant and assisting the Marina Director. She stated that because the Marina does not generate enough revenue to pay the salary of a full-time Ship Store Clerk the proposal would enable this person to perform the duties of Dock Master by transferring into the new position and would be able to keep their current salary.

Motion: A motion was made by Commissioner Balius to approve Resolution No. 09-02-08; Vice-Mayor Daly made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balius	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

Mayor Castro asked for an explanation of the request of a 90 day extension for the Corradino Group Contract. He asked what the cost would be for the Town.

Community Development Director Patrick Sullivan stated that there would be not cost to the Town for the extension and the Town would meet all DCA deadlines except the February 1st deadline for the contract.

Motion: A motion was made by Commissioner Balius to approve the 90 day extension for the Corradino Group Contract; Vice-Mayor Daly made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner			

Balius	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

PUBLIC HEARING(S)

ORDINANCES ON 2ND READING

ORDINANCE NO. 01-2008 – Permitting a Referendum Question on the March 11 Ballot Relating to Financing the Downtown Alleyway Improvement Project

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, SUBMITTING TO REFERENDUM THE QUESTION OF WHETHER THE COMMUNITY REDEVELOPMENT AGENCY MAY PLEDGE OR OTHERWISE ENCUMBER TAX INCREMENT FUNDS TO FINANCE THE DOWNTOWN ALLEYWAY IMPROVEMENT PROJECT; ESTABLISHING THE DATE OF MARCH 11, 2008 FOR THE REFERENDUM; PROVIDING FOR A BALLOT TITLE AND SUMMARY; PROVIDING FOR NOTICE AND ADVERTISING OF THE REFERENDUM; PROVIDING FOR REFERENDUM CANVASSING; AND PROVIDING FOR AN EFFECTIVE DATE.

Public Comment Open.

None

Public Comment Closed.

Commissioner Osterman asked if the wording had changed in the ordinance since the last meeting.

Attorney Karen Roselli explained that a dollar amount was added to the wording in the ordinance.

Motion: A motion was made by Commissioner Balius to approve Ordinance No. 01-2008 upon 2nd reading; Commissioner Osterman made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balius	X		
Commissioner Carey	X		

Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

Attorney Karen Roselli read Ordinance 01-2008 by caption only.

ORDINANCE NO. 02-2008 – Abolish the Merit System

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, SUBMITTING TO REFERENDUM AN AMENDMENT TO ARTICLE VI, SECTION 1, OF THE TOWN OF LAKE PARK, FLORIDA MUNICIPAL CHARTER ENTITLED “CREATION OF MERIT SYSTEM; MERIT SYSTEM COMMISSION” TO ELIMINATE THE MERIT SYSTEM OF EMPLOYMENT FOR TOWN EMPLOYEES, INCLUDING THE MERIT SYSTEM BOARD; ESTABLISHING THE DATE OF MARCH 11, 2008 FOR THE REFERENDUM; PROVIDING FOR A BALLOT TITLE AND SUMMARY; PROVIDING FOR NOTICE AND ADVERTISING OF THE REFERENDUM; PROVIDING FOR REFERENDUM CANVASSING; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR THE REPEAL OF ALL LAWS IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

Public Comment Open.

None

Public Comment Closed.

Commissioner Balius asked if the Town employees that were not under the union were covered by the merit system referenced in the ordinance.

Human Resources Director Bambi McKibbon-Turner explained that no employee either in the union or those not in the union were currently covered by the merit system.

Motion: A motion was made by Commissioner Balius to approve the Ordinance No. 02-2008 upon 2nd reading; Commissioner Osterman made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balius	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor			

Daly	X		
Mayor Castro	X		

Motion passed 5-0.

Attorney Karen Roselli read Ordinance 02-2008 by caption only.

RESOLUTIONS

RESOLUTION NO. 10-02-08

A RESOLUTION OF TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE APPROPRIATIONS AND INTERGOVERNMENTAL CONSULTING FIRM OF GOMEZ BARKER & ASSOCIATES, INC., TO REPRESENT THE TOWN OF LAKE PARK BEFORE THE EXECUTIVE AND LEGISLATIVE BRANCHES OF THE FLORIDA STATE GOVERNMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Fausto Gomez of Gomez, Barker and Associates stated that the average rate of return from his lobbying firm to municipalities in excess of 3000 to 4000 percent. He stated that he has conducted discussions with Town Manager Maria Davis regarding the needs of the Town. He stated that those needs were to enhance the Town's profile in Tallahassee in order to secure resources directly from the legislature and/or from different agencies. He gave the Town's desire for a Community Center as an example of issues that could be pursued. He explained how resources could be brought in to enhance businesses in the Town.

Mayor Castro stated that he was disappointed that Town Manager Maria Davis did not approach him regarding the request for an intergovernmental consulting firm before placing the item on the agenda. He stated that Governor Crist would have to cut 5 billion out of the state budget and he is committing an additional 1 billion to school funding. He stated that the Town had hired a grant writer in order to obtain grants and funding for the Town. He stated that the Town was currently in a position of determining how to recover. He expressed concern over the Town hiring a firm to lobby for grants and funds.

Vice-Mayor Daly stated that the money to pay for the consulting firm would be split between the Town and the CRA. He supported the hiring of the firm and stated that the Town would need to try another direction in order to finance the things that need to be done here.

Commissioner Balius recommended staying with the same sort of plan used when employing a grant writer. Hire the firm for one year and see if the position pays for itself based upon the amount of grant funding obtained.

Commissioner Osterman explained why the Town needed an advocate to obtain funding. She stated that she supported the idea of hiring the consulting firm and was willing to take the risk.

Mr. Gomez stated that the budget deficit was \$2.5 billion. He stated that 1 billion of those dollars are in the current fiscal year budget. The House and Senate will be cutting 1 billion dollars from the current year budget which leaves a \$1.5 billion deficit for the 2008-2009 fiscal year. He stated that there will be declining revenues in the State of Florida. He explained the

reasons for those declines. He gave an update on and the results of the Property Tax Proposal that was passed (see Exhibit "A").

Public Comment Open.

Desca Dubois, 516 Sabal Palm Dr. – stated that she could see both perspectives regarding the decision to hire the lobbyist consulting firm. She read a response letter that she received from Mayor Sleznik in Coral Gables with regards services received from Mr. Fausto Gomez. The letter stated that “It was a very valuable asset for a municipality to have a person who can translate the actions of the legislature into useful guidelines for local officials and who can represent the needs of the city for state funding”. She read the amount of returns brought in by Mr. Gomez for Coral Gables. She stated that the grant writer for the Town was good for accomplishing projects for the Town. The consulting firm was different in that it would provide a valuable and knowledgeable person to represent the Town before the legislature.

Public Comment Closed.

Motion: A motion was made by Commissioner Osterman to approve Resolution No. 10-02-08; Commissioner Balius made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balius	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

Commissioner Balius requested that a discussion item be placed on the next Commission Meeting Agenda to discuss security gates at the Marina.

Commissioner Osterman recommended that Recreation Director Greg Dowling also approach businesses to obtain sponsors and funding for the Kelsey Irish Fest.

ADJOURNMENT

There being no further business to come before the Commission and after a motion to adjourn by Commissioner Osterman and seconded by Commissioner Balius, and by unanimous vote, the meeting adjourned at 9:08 p.m.

Mayor Castro

Deputy Clerk Jessica Shepherd

Town Clerk Vivian Mendez

Town Seal

Approved on this ___ of _____, 2008.

TAB 2

**Town of Lake Park Town Commission
Agenda Request Form**

Meeting Date: March 12, 2008

Agenda Item No. Tab 2

- | | |
|--|--|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> RESOLUTION |
| <input type="checkbox"/> Ordinance on Second Reading | <input type="checkbox"/> DISCUSSION |
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> BID/RFP AWARD |
| <input type="checkbox"/> ORDINANCE ON FIRST READING | <input checked="" type="checkbox"/> CONSENT AGENDA |
| <input type="checkbox"/> GENERAL APPROVAL OF ITEM | |
| <input type="checkbox"/> Other: | |

SUBJECT: Regular Commission Meeting Minutes of February 20, 2008.

RECOMMENDED MOTION/ACTION: Approve the Minutes from the Regular Commission Meeting of February 20, 2008.

Approved by Town Manager *W. Davis* Date: 3/7/08

Janice Shepherd
Deputy Clerk

3/7/08
Date of Actual Submittal

Originating Department: Town Clerk	Costs: \$ N/A Funding Source: Acct. #	Attachments: Application, memo
Department Review: <input type="checkbox"/> City Attorney <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input checked="" type="checkbox"/> Town Clerk <u><i>VM</i></u> <input type="checkbox"/> Town Manager _____
Advertised: Date: _____ Paper: _____ <input type="checkbox"/> 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 <u>x</u> _____: Please initial one.

Summary Explanation/Background:



Minutes
Town of Lake Park, Florida
Regular Commission Meeting
February 20, 2008 7:40 p.m.

Town Commission Chambers, 535 Park Avenue

The Town Commission met for the purpose of a Regular Commission Meeting on Wednesday, February 20, 2008 at 7:40 p.m. Present were Mayor Castro, Vice-Mayor Daly, Commissioners Balius, Carey, and Osterman, Attorney Thomas Baird, Town Manager Maria Davis and Town Clerk Vivian Mendez.

Vivian Mendez led the Invocation.
 Commissioner Osterman led the Pledge of Allegiance.
 Town Clerk Vivian Mendez performed the Roll Call.

ADDITIONS/DELETIONS/APPROVAL OF AGENDA

Discussion of Design Institute was added to the Agenda.

Motion: A motion was made by Commissioner Carey to approve the Agenda as modified; Commissioner Osterman made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balius	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

PROCLAMATIONS

2007 Employee of the Year Kimberly Ann Alexander

Motion: A motion was made by Commissioner Balius to approve the Proclamation to the 2007 Employee of the Year Kimberly Ann Alexander; Vice-Mayor Daly made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner			

Balius	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

Mayor Castro thanked Ms. Alexander for her hard work in the Public Works Department. He read the Proclamation.

Ms. Alexander thanked Town staff and the Public Works Department for all of their hard work.

Proclamation Honoring Patricia Barnes

Motion: A motion was made by Commissioner Balius to approve the Proclamation to Patricia Barnes; Vice-Mayor Daly made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balius	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

Mayor Castro thanked Ms. Barnes for her work in the Town's Library. He read the Proclamation.

Ms. Barnes thanked everyone for her Proclamation.

PUBLIC and OTHER COMMENT

None

COMMENTS BY COMMISSION, TOWN MANAGER, TOWN ATTORNEY

Town Manager Maria Davis announced the second monthly Sunset Party at the Marina on February 29, 2008. There will be food, beverages and entertainment. On March 1, 2008 an Arts and Crafts Festival will also take place at the Marina. She also announced an open house to

introduce sporting events available for children on March 5, 2008 in the Town's Mirror Ballroom. Free pizza and soda will be served. She asked residents to contact Recreation Director Greg Dowling at 881-3338 for additional information. She announced that the Town's Election will be taking place on March 11, 2008. She stated that there will be two referendum questions on the ballot. The first referendum is for the renovations of the alleyways in the CRA District. She explained the recent Supreme Court Ruling whereby that requires an approval from residents to fund a CRA project. She stated that the project would not cost taxpayers any extra dollars. She explained that the funds were coming from the properties within the CRA District which were business districts and industrial areas. She stated that the second referendum question was to abolish the merit board system. She gave a history of the merit system and its functions. She explained why it was no longer necessary. She urged residents to vote yes to abolish the merit system.

She wished Mayor Castro farewell. She thanked him for hiring her and stated that it was good working with him over the last year.

Town Attorney Thomas Baird stated that Town Manager Maria Davis did a good job of explaining the two referendum questions.

He also thanked Mayor Castro for hiring him and he thanked him for the service he provided as Mayor to the Town.

Commissioner Carey stated that his newborn daughter, Eva Elizabeth was doing fine.

Commissioner Balius requested an agenda item for the next Commission Meeting regarding the Marina. He recommended a tiki hut or awning on the deck at the Marina.

He stated that it was a pleasure working with Mayor Castro over the last six years.

Mayor Castro stated that it was everybody's Town even if they were not actively involved in the community.

Vice-Mayor Daly stated that he had been reading a lot of articles regarding Amendment One. He stated that the politicians and Governor Crist sold the state a bad bill of goods with regards to the property tax amendment.

Commissioner Osterman stated that she was pleased with the renovations at Ilex Park.

Mayor Castro thanked everyone for their support during his term as Mayor.

CONSENT AGENDA:

1. Ilex Park – Notification of Change Order Expenditures
2. Resolution No. 12-02-08 Library Accounting Clerk
3. Resolution No. 13-02-08 Library Assistant II
4. Purchase of a 2008 Ford E-450 25- Passenger Starcraft Mini Bus
5. American Public Works Association (APWA) Dinner

Items 4 and 5 was pulled from the Consent Agenda for discussion.

Public Comment Open.

None

Public Comment Closed.

Motion: A motion was made by Commissioner Balius to approve the Consent Agenda with the exception of items 4 and 5; Commissioner Osterman made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balius	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

Purchase of a 2008 Ford E-450 25- Passenger Starcraft Mini Bus

Commissioner Osterman stated that the bus that the Town wanted to purchase was a 25 passenger bus and in the past there were more than 25 children in the programs. She asked for assurance that the Town would not have to rent a supplemental bus.

Town Manager Maria Davis stated that she spoke with Recreation Director Greg Dowling and he explained to her that the children are shuffled by age and shifts when taking bus trips.

Vice-Mayor Daly recommended rules for maintaining the new bus mechanically.

Recreation Director Greg Dowling stated that he spoke with Paul Mathis in Public Works and they agreed that they would keep a watchful eye on the new bus and maintain the bus by washing it once a month and enforcing rules for the children who ride on the bus.

Vice-Mayor Daly asked if there would be bus trips for the seniors again.

Recreation Director Greg Dowling stated that the bus trips for seniors would be reinstated.

Public Comment Open.

None

Public Comment Closed.

American Public Works Association (APWA) Dinner

Commissioner Osterman stated that a Sheriff or Deputy needed to present anytime alcohol is

served at an event. She stated that she did not see that a Sheriff or Deputy was retained for the APWA Dinner.

Town Manager Maria Davis stated that she was not aware that it was a rule to have a Sheriff or Deputy present at events where alcohol is served. She stated that she would provide one for the APWA Dinner if necessary.

Mayor Castro stated that public officials would be attending the dinner and that it was not necessary to have a Sheriff or Deputy present.

Public Comment Open.

None

Public Comment Closed.

Motion: A motion was made by Commissioner Carey to approve items 4 and 5 of the Consent Agenda; Commissioner Osterman made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balius	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

PUBLIC HEARING(S)

RESOLUTIONS

RESOLUTION NO. 14-02-08

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA SETTING FORTH THE TOWN COMMISSION'S INTENT TO USE THE UNIFORM METHOD FOR COLLECTION OF A SPECIAL ASSESSMENTS TO BE LEVIED UPON CERTAIN REAL PROPERTIES AS MORE PARTICULARLY DESCRIBED IN SECTION 2 OF THIS RESOLUTION, TO FUND THE INSTALLATION OF A STORM WATER MANAGEMENT SYSTEM AND RELATED IMPROVEMENTS; STATING A NEED FOR SUCH LEVY; PROVIDING DIRECTIONS TO THE TOWN CLERK TO PROVIDE AN EXECUTED COPY OF THIS RESOLUTION TO THE PALM BEACH COUNTY PROPERTY APPRAISER, THE PALM BEACH COUNTY TAX COLLECTOR, AND THE STATE OF FLORIDA DEPARTMENT OF REVENUE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Manager Maria Davis explained that at the December 19, 2007 Commission Meeting the Commission approved the establishment of a storm water utility. She stated that Resolution No. 14-02-08 provides for the Town to collect fees for the storm water utility through a non Ad-Valorem assessment. She stated that the Resolution would allow the assessment be placed on the tax bill.

Mayor Castro asked what the assessment would cost taxpayers.

Town Manager Maria Davis stated that it would cost taxpayers approximately \$3 to \$5 per month.

Public Comment Open.

None

Public Comment Closed.

Motion: A motion was made by Commissioner Balius to approve Resolution No. 14-02-08; Commissioner Osterman made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balius	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

QUASI-JUDICIAL HEARINGS

RESOLUTION NO. 15-02-08

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, DENYING A REQUEST BY PALM BEACH FOOT & ANKLE, INC., FOR A WAIVER FROM THE SIGN CODE REQUIREMENTS OF TOWN CODE SECTION 78-70(p)(1)(k), FOR AN EXISTING NON-CONFORMING MONUMENT SIGN LOCATED ON A .02870 ACRE PARCEL OF LAND, OWNED BY HENRY STARK AT 701 PARK AVENUE (CORNER OF PARK AVENUE AND 7TH STREET) IN THE TOWN OF LAKE PARK, FLORIDA, AND PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Vivian Mendez swore in all witnesses.

Ex-parte communication was declared as follows:

Mayor Castro – none
Vice-Mayor Daly –none
Commissioner Balius – none
Commissioner Osterman – none
Commissioner Carey – none

Community Development Director Patrick Sullivan explained that the owner of Palm Beach Foot and Ankle was requesting a waiver for a non-compliant sign in the Park Avenue Downtown District. The sign has been on the property for approximately 20 years. The Planning and Zoning Board and staff recommended that the Commission not approve the waiver because the sign is inconsistent with what they are trying to do in the Park Avenue Downtown District. The sign is very large and is located at the gateway of the Park Avenue Downtown District. The sign does not fall within the pedestrian scale that the Commission had requested for the Park Avenue Downtown District.

Mayor Castro stated if the Commission approved the waiver, other business owners should not expect to be able to put up the same kind of sign. He stated that the sign was very large and when it was installed there were four lanes with no stop sign. The sign has outlived its time in terms of aesthetics and the Town has made a large investment in the area where the sign is located.

Commissioner Balius stated that in 1997 an ordinance was passed giving business owners in the Park Avenue Downtown District five years to take down non-conforming signs.

Community Development Director Patrick Sullivan stated that it was a condition in the code but not all of the business owners were originally notified. He stated that he had come to the Commission one year ago with regards to the notification and the Commission had directed him to notify all of the business owners with non-conforming signs in the Park Avenue Downtown District. He stated that he has given two notifications to business owners.

Commissioner Osterman thanked Community Development Director Patrick Sullivan for the staff report he provided to the Commission.

Vice-Mayor Daly stated that there needed to be consistency with regards to the non-conforming signs in the Park Avenue Downtown District.

Henry Stark owner of Palm Beach Foot and Ankle Inc. stated that he expressed his concerns at a previous meeting. He stated that part of his job was to protect residents and patients. The majority of his patients are elderly and they sometimes forget where the office is despite the large sign. He stated that removing the sign would make it more confusing for his elderly patients. He stated that he was unaware that he would have to meet 11 criteria for waiver of sign code requirements. He stated that he wanted to protect his patients and the residents of the Town.

Commissioner Carey stated that the Commission was striving to be fair and set a standard for all business owners in the Park Avenue Downtown District.

Commissioner Balius expressed his concerns over not having the signs removed five years ago when they were supposed to be removed. He stated that code enforcement officers needed to

commence enforcement of the signage regulations.

Commissioner Osterman stated that revitalization of the downtown district needed to commence.

Mayor Castro stated that the sign was very large in comparison to the building.

Mayor Castro passed the gavel to Vice-Mayor Daly.

Discussion ensued between the Commission regarding the waiver of sign code requirements.

Public Comment Open.

None

Public Comment Closed.

Motion: A motion was made by Mayor Castro to deny Resolution No. 15-02-08 Waiver Request by Palm Beach Foot & Ankle, Inc.; Commissioner Balius made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balius	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

Mayor Castro took back the gavel.

Discussion and Possible Action

Amendment to Town Manager's Employment Agreement

Motion: A motion was made by Commissioner Balius to approve the Amendment to the Town Manager's Agreement; Commissioner Osterman made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balius	X		
Commissioner Carey	X		
Commissioner			

Osterman	X		
Vice-Mayor			
Daly	X		
Mayor			
Castro	X		

Motion passed 5-0.

Town Manager’s Annual Performance Evaluation and Possible Merit Increase

Discussion ensued between the Commission, Town Attorney Thomas Baird and Town Manager Maria Davis regarding the review of the Town Manager’s Evaluations (see Exhibit “A”).

Commissioner Balius stated that Town Manager Maria Davis was the best Town Manager that the Town has had since he has lived in the Town for 24 years.

Commissioner Osterman stated that Town Manager Maria Davis has far exceeded her expectations.

Motion: A motion was made by Commissioner Balius to approve a 5% merit increase in Town Manager Maria Davis’ salary; Vice-Mayor Daly made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Balius	X		
Commissioner Carey	X		
Commissioner Osterman	X		
Vice-Mayor Daly	X		
Mayor Castro	X		

Motion passed 5-0.

Town Manager Maria Davis expressed her gratitude to the Commission.

Security Measures at the Marina

Commissioner Balius stated that there were complaints regarding Marina security. He discussed several of the security issues at the Marina.

Mayor Castro stated that he was at the Marina the previous week and there was an incident where the door on the 2nd floor was open and a group of people were unable to lock it after a meeting. He stopped the security officer to get assistance in locking the door but the guard was not cooperative. He expressed his concerns with security issues at the Marina.

Vice-Mayor Daly recommended giving direction to the security firm contracted for services at the Marina.

Discussion ensued between the Commission regarding security issues at the Marina.

Commissioner Osterman asked if the Security Manager and Marina Manager could come to a Commission Meeting to discuss the security issues at the Marina.

The Security Measures at the Marina item was deferred to the next Commission Meeting.

Projected Impact of Constitutional Amendment Property Tax Initiative

Finance Director Anne Costello gave a Power Point presentation (see Exhibit "B") on the projected impact of the Constitutional Amendment Property Tax Initiative.

Town Manager Maria Davis discussed the benefits of using parking meters as an alternate revenue source for the Town. She discussed other options for making up the difference in the funds received by the Town (see Exhibit "B"). She stated that the Town collected 5.1 million dollars in Ad Valorem taxes. Police and Fire Services cost the Town approximately 5 million dollars.

Discussion ensued between the Commission regarding Ad Valorem Taxes and Millage Rates.

Design Institute

Mayor Castro stated that he spoke with Maria York at a legislative breakfast and she expressed interest in conducting a design institute study in the Town of Lake Park. He asked Town Manager Maria Davis for her recommendation.

Town Manager Maria Davis recommended the Park Avenue Downtown District as the location for the design institute study.

Commissioner Osterman gave her location recommendations for the design institute study. She recommended 10th St. and the U.S. Highway One corridor.

Discussion of the Design Institute concluded.

Mayor Castro stated that he was disappointed that two of the three Mayoral candidates were not present at the Commission Meeting.

ADJOURNMENT

There being no further business to come before the Commission and after a motion to adjourn by Commissioner Balius and seconded by Commissioner Carey, and by unanimous vote, the meeting adjourned at 9:17 p.m.

Mayor Castro

Deputy Clerk Jessica Shepherd

Town Clerk Vivian Mendez

Town Seal

Approved on this ____ of _____, 2008.

TAB 3

**Town of Lake Park Town Commission
Agenda Request Form**

Meeting Date: March 12, 2008

Agenda Item No. *Tab 3*

- | | |
|---|---|
| <input type="checkbox"/> PUBLIC HEARING
<input type="checkbox"/> Ordinance on Second Reading
<input type="checkbox"/> Public Hearing

<input type="checkbox"/> ORDINANCE ON FIRST READING

<input type="checkbox"/> GENERAL APPROVAL OF ITEM

<input type="checkbox"/> Other: | <input type="checkbox"/> RESOLUTION

<input type="checkbox"/> DISCUSSION

<input type="checkbox"/> BID/RFP AWARD

<input checked="" type="checkbox"/> CONSENT AGENDA |
|---|---|

SUBJECT: Professional Engineering Services to Develop a Fee Schedule for the Town's Stormwater Utility

RECOMMENDED MOTION/ACTION: Approve

Approved by Town Manager *W. Davis* Date: *2/24/08*

Name/Title

Date of Actual Submittal

Originating Department: Town Manager	Costs: \$30,000 Funding Source: Non-Dept'l Contingency Acct. # _____	Attachments: Proposal
Department Review: <input type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
Advertised: Date: _____ Paper: _____ <input type="checkbox"/> 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: The Town Commission approved establishing a storm water utility to be able to fund the proper maintenance and improvements to our existing

stormwater system. The next step is to perform an engineering analysis to establish an appropriate fee schedule based on square footage of impervious surface per parcel of property within the Town. Attached please find a proposal from Calvin Giordano and Assoc. to provide said services in the negotiated amount of \$30,000. Staff believes this is reasonable and is therefore recommending approval to proceed.



December 14, 2007

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

RE: Stormwater Utility Feasibility Analysis
CGA Proposal No. 07-1514

Dear Ms. Davis,

We are pleased to submit this proposal for Professional Services on the above referenced project located in the Town of Lake Park.

I. Professional Engineering Services

A. Civil Engineering

1. Compute the impervious area of all the residential parcels in the Town of Lake Park and develop an average impervious area for these parcels. We will utilize G.I.S. Data, Palm Beach County Property Appraiser Data, aerial photographs and field observation in order to complete this task.
2. Compute the impervious area of all the multi-family parcels within the Town of Lake Park and develop an average impervious area for these parcels.
3. Compute the impervious area of all the non-residential parcels within the Town of Lake Park and develop an average impervious area for these parcels.
4. Compute the impervious areas of the remaining undeveloped parcels within the Town of Lake Park and develop an average impervious area for these parcels.

Engineering
Construction Engineering
& Inspection
Municipal Engineering
Transportation Planning
& Traffic Engineering
Surveying & Mapping
Planning
Landscape Architecture
& Environmental Services
Construction Services
Indoor Air Quality
Data Technologies
& Development
Emergency Management
Services

560 Village Blvd., Suite 340
West Palm Beach, FL 33409
Phone: 561.684.6161
Fax: 561.684.6360
www.calvin-giordano.com

5. After all of the impervious areas are computed for the various parcels, the values will be tabulated and the pervious areas will be determined for each type of parcel. Since rainfall runoff and impervious area are directly related, these values will be utilized to determine an equivalent stormwater unit (ESU). An average single family residential lot will be one (1) ESU and all other parcels will be related to this equivalent. An ESU value will be determined for each parcel including single family, multi-family, non-residential and vacant. The total ESU's for the Town of Lake Park will be calculated.

II. Professional Data Technologies & Development Services

- A. CGA GIS Staff will perform research & Land Use analysis on all Town of Lake Park Parcel Properties to determine permeability characteristics of each parcel property, & consequently those characteristics for the entire city.

1. These research & analysis processes will require the acquisition & utilization of Palm Beach County Tax Records Data Base to determine intended individual property Land Use designations
 - These intended Land Use designations will be applied to a pervious / impervious ratio model provided by CGA hydrologic Engineers to determine the percentage of impervious area by Land Use Designation
2. CGA will acquire & utilize the latest parcel property GIS polygon dataset from Palm Beach Property Appraiser's office
 - CGA GIS Staff will calculate the area of each parcel property within the Town of Lake Park
 - The parcel properties will be related to the Land Use designation table, & pervious / impervious ratio model table.
 - This Geo-Spatial analysis results in an output of total pervious vs. impervious area for the Town of Lake Park. Which will assist the Engineers with the Storm Water Drainage Feasibility Study determination.

BASIS OF PROPOSAL

- Any opinion of the construction cost prepared by Calvin, Giordano & Associates, Inc. represents its judgment as a design professional and is supplied for the general guidance of the CLIENT since Calvin, Giordano & Associates, Inc. has no control over the cost of labor and material, or over competitive bidding or market conditions. Calvin, Giordano & Associates, Inc. does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to the CLIENT.
- Any outside engineering services, studies, or laboratory testing not specifically mentioned in the Scope of Services will be the responsibility of the CLIENT. All municipal, permit, and agency fees as well as Title Certificates will be paid by the CLIENT.
- Basic services outlined within this proposal shall be considered complete when the project plans are submitted to the regulatory agencies for Certification.
- Calvin, Giordano & Associates, Inc. is performing the consultant services set forth in this Agreement strictly as a professional consultant to CLIENT. Nothing contained in this Agreement shall create any contractual relationship between Calvin, Giordano & Associates, Inc. and any contractor or subcontractor performing construction activities on the project, or any of CLIENT's other professional consultants.
- Calvin, Giordano & Associates, Inc. shall not be responsible for the contractor's schedules or failure to carry out the construction in accordance with the construction documents. Calvin, Giordano & Associates, Inc. shall not have control over or charge of acts or omissions of the contractor, subcontractors, or their agents or employees, or of any other persons performing portions of the construction.
- Calvin, Giordano & Associates, Inc. will ensure that all consultants carry proper insurance, including professional liability insurance, if appropriate.

ADDITIONAL FEES

The following services are NOT included in this proposal and will be considered Additional Services, which will be addressed in a separate contractual agreement. The services include but are not limited to:

- Architectural, structural (i.e., retaining walls, bridges, docks), mechanical (i.e., fire pumps), fire protection, geotechnical and testing, environmental assessment, power, gas, telephone, cable television, site lighting services.
- Calculations for needed fire flow for site demands, based on building type use and size, if required.
- Calculations of off-site flood stages.
- Construction quality control inspections.
- Off-site engineering and negotiations for off-site easements, if required (other than as specified in the Scope of Services).
- Permit application or negotiation with permitting authorities other than those specifically listed herein.

- Preparation of construction contract documents, other than drawings and technical specifications (e.g., bid schedule, project manual);
- Professional land surveying not included in the scope of services (i.e., buried utility investigation, easement research, condominium documents, project stake-out and as-built drawings).
- Professional services required due to conditions different from those itemized under the Scope of Services or due to events beyond the control of Calvin, Giordano & Associates, Inc.
- Professional services required, due to changes in the site plan initiated by the CLIENT, their representatives or other consultants (e.g., architects, landscape architects, etc.) after either design or preparation of the construction drawings has commenced.
- Re-review of rejected shop drawings.
- Review and approval of Contractor pay requests.
- Review of Data supplied by the Client (i.e. GIS data sets, databases, Aerial images, etc.) required for integration into this project.
- Review of shop drawings for contractor or Client selected alternatives, materials, products, etc.
- Special shop drawing annotation and modification to expedite shop drawing approval process.
- Updated boundary survey, site evaluation or closing assistance work, unless specified above.

REIMBURSABLE EXPENSES

Calvin, Giordano & Associates, Inc. and its consultants will be reimbursed for the printing of drawings and specifications, deliveries, Federal Express services, required travel time and travel expenses, long distance telephone calls, fax transmittals, postage, fees paid for securing approval of authorities having jurisdiction over the project, renderings, models and mock-ups required by CLIENT, as required. Reimbursable expenses and sub-consultant invoices will be billed directly to the CLIENT at a multiplier of 1.25.

MEETING ATTENDANCE

Due to the difficulties of predicting the number or duration of meetings, no meetings other than those listed above, are included in the Schedule of Fees shown below. Preparation for and meeting attendance, as necessary, will be provided on a time and materials basis and will be billed at the standard hourly rates in accordance with the attached Hourly Rate Schedule.

SCHEDULE OF FEES

Calvin, Giordano & Associates, Inc. will perform the Scope of Services for a lump sum fee as shown in the proposed Schedule of Fees:

PROPOSED SCHEDULE OF FEES	
I	Professional Engineering Services
A	Professional Civil Engineering Services \$21,500.00
II	Professional Data Technologies & Development Services \$14,100.00
	GIS \$14,100.00
III	Meetings not included in I thru II Hourly
TOTAL Lump Sum (Plus Hourly Services) \$35,600.00	

~~\$35,600~~
\$30,000

TERMS OF THE AGREEMENT

- All aspects of GIS data development created by Calvin, Giordano & Associates, Inc. will be property of the CLIENT and will given to the CLIENT at time of project completion.
- Calvin, Giordano & Associates, Inc. agrees to indemnify, hold harmless and, at CLIENT's option, defend or pay for an attorney selected by CLIENT, to defend CLIENT, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, any appellate attorney costs, court costs, and expenses, caused by, arising from or related to any acts, omissions or negligence of Calvin, Giordano & Associates, Inc.
- Calvin, Giordano & Associates, Inc. and the CLIENT agree by their signatures on this document that each party will not hire or attempt to hire any staff from the other party while under contract together.
- Calvin, Giordano & Associates, Inc. is preparing and providing drawings, plans, specifications and other documents as outlined in the scope of services for this Agreement for use in the construction of this project, based upon design and construction criteria prepared and provided by others, including but not limited to the CLIENT and CLIENT's consultants. Calvin, Giordano & Associates, Inc. is not responsible for any errors and omissions in the aforesaid design and construction criteria provided by others.
- CLIENT agrees to indemnify, hold harmless and, at Calvin, Giordano & Associates, Inc.'s option, defend or pay for an attorney selected by Calvin, Giordano & Associates, Inc., to defend Calvin, Giordano & Associates, Inc., its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, any appellate attorney costs, court costs, and expenses, caused by, arising from, or related to any acts, omissions or negligence of CLIENT or its consultants.

- CLIENT agrees to limit Calvin, Giordano, & Associates, Inc.'s liability for any and all claims that CLIENT may assert on its own behalf or on behalf of another, including but not limited to claims for breach of contract or breach of warranty, to the amount of fees paid to Calvin, Giordano & Associates, Inc. pursuant to this Agreement.
- Drawings, specifications, and other documents and electronic data furnished by Calvin, Giordano & Associates, Inc. in connection with this project are instruments of service. All original instruments of service shall be retained by Calvin, Giordano & Associates, Inc. and will remain their property, with all common law, statutory and other reserved rights, including copyright, in those instruments. This information provided in the instruments of service is proprietary and will not be shared with others without prior written consent. The CLIENT may request reproducible copies, and all original documents upon payment of all outstanding invoices, and expenses.
- In the event of termination in accordance with this Agreement or termination not the fault of Calvin, Giordano & Associates, Inc., Calvin, Giordano & Associates, Inc. shall be compensated for services properly performed prior to receipt of notice of termination, together with Reimbursable Expenses then due.
- Invoices for work accomplished to date will be submitted monthly and are payable within thirty (30) days. The CLIENT will pay invoices upon receipt and understands interest charges of 1.5% per month will be applied to any unpaid balance past thirty (30) days. Calvin, Giordano & Associates, Inc. may elect to stop work until payment is received. If work is stopped for thirty (30) days or more, Calvin, Giordano & Associates, Inc. may request compensation for start-up costs when work resumes.
- The CLIENT or their representative shall be available to meet with Calvin, Giordano & Associates, Inc. and provide decisions in a timely manner throughout the course of the project. The CLIENT will provide all plans and other pertinent information, which are necessary for Calvin, Giordano & Associates, Inc. to provide complete professional services as outlined in this contract.
- The terms of Agreement shall be valid for the Client's acceptance for a period of thirty (30) days from the date of execution by Calvin, Giordano & Associates, Inc. after which time this contract offer becomes null and void if not accepted formally (evidenced by receipt of an executed copy of this document). All rates and fees quoted in this document shall be effective for a period of six (6) months, after which time they may be renegotiated with the CLIENT.
- This Agreement may be terminated by either party upon not less than seven (7) days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Failure of CLIENT to make payments to Calvin, Giordano & Associates, Inc., in accordance with this Agreement, shall be considered substantial nonperformance and cause for termination.

MISCELLANEOUS PROVISIONS

- CLIENT and Calvin, Giordano & Associates, Inc., respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Neither CLIENT nor Calvin, Giordano & Associates, Inc. shall assign this Agreement without written consent of the other.
- This Agreement represents the entire and integrated agreement between the CLIENT and Calvin, Giordano & Associates, Inc. and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Calvin, Giordano & Associates, Inc. and the CLIENT.
- Unless otherwise provided, this Agreement shall be governed by the law of the place where the project is located.

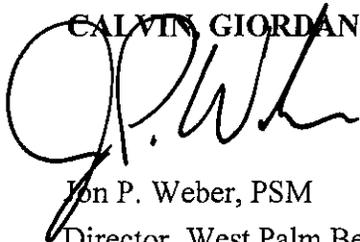
TERMINATION OF THE AGREEMENT

- This Agreement may be terminated by either party upon not less than seven (7) days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Failure of CLIENT to make payments to Calvin, Giordano & Associates, Inc., in accordance with this Agreement, shall be considered substantial nonperformance and cause for termination.
- In the event of termination in accordance with this Agreement or termination not the fault of Calvin, Giordano & Associates, Inc., Calvin, Giordano & Associates, Inc. shall be compensated for services properly performed prior to receipt of notice of termination, together with Reimbursable Expenses then due.

We appreciate the opportunity to submit this proposal. Calvin, Giordano & Associates, Inc. is prepared with the necessary manpower to proceed with the proposed scope of services upon receipt of the executed authorization. Our personnel are committed to completing the project in a timely manner. Please indicate your acceptance of this proposal by signing below and returning one executed copy of the contract to this office. We look forward to working with you in making this project a success.

Sincerely,

CALVIN GIORDANO & ASSOCIATES, INC.



Jon P. Weber, PSM

Director, West Palm Beach

~~\$35,000~~
\$30,000

Cost of these services are ~~\$35,000.00~~ plus hourly as noted in fee breakdown.

ACCEPTANCE OF CONTRACT

CALVIN, GIORDANO & ASSOCIATES, INC.

By:  Date: 12-17-07
Name: Jon P. Weber, PSM
Title: Director, West Palm Beach

By: _____ Date: _____
Name: Ms. Maria Davis
Title: Town Manager

TAB 4

**Town of Lake Park Town Commission
Agenda Request Form**

Meeting Date: March 12, 2008

Agenda Item No. *Tab 4*

- | | |
|---|---|
| <input type="checkbox"/> PUBLIC HEARING
<input type="checkbox"/> Ordinance on Second Reading
<input type="checkbox"/> Public Hearing

<input type="checkbox"/> ORDINANCE ON FIRST READING

<input type="checkbox"/> GENERAL APPROVAL OF ITEM

<input type="checkbox"/> Other: | <input checked="" type="checkbox"/> RESOLUTION

<input type="checkbox"/> DISCUSSION

<input type="checkbox"/> BID/RFP AWARD

<input checked="" type="checkbox"/> CONSENT AGENDA |
|---|---|

SUBJECT: Solid Waste Authority Interlocal Agreement

RECOMMENDED MOTION/ACTION: *Authorize Mayor to sign Interlocal Agreement*

Approved by Town Manager *H.P. Davis* Date: *3/3/08*

Originating Department: Town Manager	Costs: \$ _____ Funding Source: _____ Acct. # _____	Attachments: _____ _____
Department Review: <input type="checkbox"/> Town Attorney <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input checked="" type="checkbox"/> Town Manager _____
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> 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:

This is an extension of the existing Recycling Interlocal Agreement that would have expired in 2008 and the Delivery of Municipal Solid Waste to a Designated Facility ILA which would have expired in 2010. Both have been combined into one agreement and will be effective until 2013.

RESOLUTION NO. 16-03-08

**A RESOLUTION OF THE TOWN COMMISSION OF
THE TOWN OF LAKE PARK, FLORIDA
AUTHORIZING THE MAYOR TO SIGN THE
INTERLOCAL AGREEMENT WITH THE SOLID
WASTE AUTHORITY FOR THE DELIVERY OF
MUNICIPAL SOLID WASTE TO DESIGNATED
FACILITIES AND FOR A MUNICIPAL
RECYCLING PROGRAM**

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 desires to implement strategies that will preserve the environment, conserve landfill space, and provide space for the disposal of municipal solid waste; and

WHEREAS, The Solid Waste Authority has a comprehensive and Environmentally sound disposal system for all residents of Palm Beach County, and

WHEREAS, the Town wishes to participate in a coordinated County-wide program for the management of hazardous waste and the safe and sanitary processing of both solid waste and residential recyclable materials; and

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 Interlocal Agreement for the Delivery of Municipal Solid Waste to Designated Facilities and for a Municipal Recycling Program with the Solid Waste Authority.

SECTION 2. This Resolution shall take effect immediately upon its adoption.

12/19

December 3, 2007

Ms. Maria Davis, Town Manager
Town of Lake Park
535 Park Avenue
Lake Park, Florida 33403



YOUR PARTNER FOR
SOLID WASTE SOLUTIONS

RECEIVED

DEC 5 2007

Town Of Lake Park
Office Of Town Manager

Re: New combined Interlocal Agreement

Dear Ms. Davis,

The Solid Waste Authority appreciates the support shown by our municipal partners providing for a comprehensive and environmentally sound disposal system for all residents of Palm Beach County. Our invaluable partnership provides a great plan which helped us process more than two (2) million tons of solid waste and vegetative debris as well as 138,000 tons of recyclables last Fiscal Year.

To this point, we have received your written commitment in the form of two (2) Interlocal Agreements (ILA). One is the Recycling Interlocal Agreement that expires in 2008 and the other is the Delivery of Municipal Solid Waste to a Designated Facility ILA expiring in 2010. For housekeeping purposes only, we merged the two and created one new document with a shared expiration date of 2013. Minor modifications to the language in this new ILA include page two (sections 1 & 2) stating the documents are now combined and page five (sections 11, 13 & 14) addresses the handling of recyclable materials today which was not addressed in your present Recycling ILA because our recycling operations have changed.

Please find enclosed three copies of the new ILA for your municipality that will replace both the present Interlocal Agreements you now have on file with the Solid Waste Authority. These three originals need to be signed by your Mayor and **have the municipal seal affixed on the last page**. Once completed please return all three originals to our office to the attention of Linda Hodgkins, Intergovernmental Affairs.

A fully executed original will be returned to you for your files. We will keep one copy for our files and the last document will be forwarded to the Clerk of the Courts office.

If you would notify me directly at 640-4000 Ext. 4404 when this document will be ready to go on your Council agenda for approval, this would be helpful to me for tracking purposes and much appreciated.

Please feel free to contact me with any questions or concerns. As always, thank you for your assistance and support.

Sincerely,

Linda S. Hodgkins
Intergovernmental Affairs Director

**INTERLOCAL AGREEMENT FOR THE DELIVERY OF
MUNICIPAL SOLID WASTE TO DESIGNATED FACILITIES AND
FOR A MUNICIPAL RECYCLING PROGRAM**

THIS AGREEMENT, made and entered into this ____ day of _____, 2007 by and between the **SOLID WASTE AUTHORITY OF PALM BEACH COUNTY**, a dependent special district created pursuant to Chapter 2001-331, Laws of Florida, as amended, hereinafter called "Authority", and the **TOWN OF _____**, a municipal corporation, chartered and organized in accordance with the laws of the State of Florida, hereinafter called "Town".

WITNESSETH:

WHEREAS, the Authority has been empowered by law to carry out the powers, obligations and requirements in Palm Beach County, Florida, prescribed to a "county" pursuant to the provisions of Chapter 403, Part IV, Florida Statutes; and

WHEREAS, Chapter 403, Part IV, Florida Statutes encourages counties to enter into Interlocal Agreements with municipalities to establish recycling programs and carry out recycling activities; and

WHEREAS, the Town desires to work in cooperation with the Authority to continue a municipal recycling program toward achievement and maintenance of the State recycling goal and the requirements of Chapter 403, Part IV, Florida Statutes; and

WHEREAS, in addition, the Town provides for the collection of solid waste from the residents and businesses and residential recyclables within its boundaries and recognizes the need for safe and sanitary processing and disposal of solid waste and residential recyclable materials; and

WHEREAS, the Town wishes to participate in a coordinated County-wide program for the management of hazardous waste and control of solid waste processing and disposal and residential recycling participation in cooperation with federal, state, and local agencies responsible for the prevention, control, or abatement of air, water, and land pollution; and

WHEREAS, the Town together with Palm Beach County recognizes the need to plan and develop an adequate solid waste and residential recycling system for the benefit of all the residents of Palm Beach County ..

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 Town, its constituents and the Authority, it is agreed as follows:

1. The purpose of this Agreement is to set forth for the terms and conditions for the delivery of municipal solid waste to designated facilities and for the operation of a recycling program between the Authority and the Town.
2. The Town agrees that all solid waste and residential recyclables collected by or on behalf of the Town shall be disposed of at an Authority operated facility or Authority permitted facility ("designated facilities"), in accordance with this Agreement.
3. The Town agrees to cooperate with the Authority to provide all necessary and required information to the Authority in a timely manner so that it can be determined if the Town's solid waste and residential recyclables are being delivered to a designated facility.
4. The Authority agrees to maintain its disposal facilities to ensure adequate capacity for the Town's waste and residential recyclables to operate within all applicable local, state and federal environmental guidelines.

5. Compliance with Zoning Ordinances

Any transfer and/or disposal of solid waste and recyclable materials shall be undertaken in a location suitable and adequate for such activity and shall comply with all local zoning ordinances and any other applicable local and state statutes, ordinances and regulations.

6. Waste Disposal Requirements

All solid waste and residential recyclables collected by or on behalf of the Town shall be disposed of at an Authority operated or permitted facility in accordance with the criteria established for acceptance of loads deemed suitable for processing at the designated facilities.

7. Collection of Source-Separated Recyclable Material

A. Residential

Individual residents/homeowners shall be encouraged by the Town to separate their solid waste into recyclables and nonrecyclables. Each residential unit or combination of units will receive the appropriate type and number of reusable containers, in accordance with the countywide recycling program, into which Recyclable Materials will be deposited.

Commingled Recyclable Materials shall mean: aluminum cans, foil and pans; aseptic containers; gable-topped containers; glass bottles and jars (green, brown and clear); and plastic containers # 1 - #7 (except Styrofoam). Commingled recyclables will be deposited into one of the appropriately designated reusable containers.

Fiber Recyclable Materials shall mean: newspapers (including inserts); magazines and catalogs; phone books; corrugated cardboard; and kraft bags. Fiber Recyclable Materials shall be placed loose in the other appropriately designated reusable container.

Corrugated cardboard shall be cut to an acceptable size and flattened, and for curbside residents, shall be set beside or in the same reusable container as the Fiber Recyclable Material. Residents receiving containerized service may receive a separate container to be used for the collection of Corrugated cardboard.

The Authority retains the right to modify the manner in which materials are set out for collection with proper notice to the Town. Notice for a substantial change in collection method shall be no less than one year.

B. Commercial

Individual businesses shall be encouraged by the Town to separate their solid waste into two categories: recyclable and non-recyclable. Businesses contracting for services will arrange with their service provider to receive one or more containers into which recyclable material may be deposited. Acceptable materials for commercial recycling shall include: Commingled Recyclable Materials, Corrugated Cardboard, Sorted White Ledger, Mixed Paper and Sorted Office Paper and any other materials agreed to in writing by the Town and the Authority.

Commercial recyclable materials shall be sorted by the business by type and placed in separate containers. Corrugated Cardboard, Sorted White Ledger, Mixed Paper and Sorted Office Paper as more specifically defined as follows shall be prepared for collection in accordance with the collection standards below:

- (1) Sorted White Ledger - white ledger or computer printout paper. Dry and free of contaminants.
- (2) Sorted Office Paper - office paper including letterhead, computer paper, legal paper, loose-leaf paper, copy and typing paper.
- (3) Corrugated Cardboard – containers having liners of either test liner, jute, or kraft.
- (4) Mixed Paper – a mixture of various types and grades of paper including but not limited to: all office paper, colored paper, corrugated cardboard, envelopes (excluding envelopes with cellophane windows), junk mail, kraft bags, magazines, and catalogs. Mixed Paper does not include tissue or towel type paper.

8. Commercial Recycling Revenue Share

As a further incentive for the Town to actively pursue commercial recycling, the Authority and the Town may enter into a separate agreement to provide for payment to the Town for all acceptable loads of agreed upon commercial Recyclable Materials. Types of commercial Recyclable Materials eligible for payment shall be determined by the Authority.

9. Transportation and Equipment

The Town shall be responsible for having collected Recyclable Materials transported to a designated facility, including, but not limited to, the Authority's Residential Materials Recycling Facility (RMRF), the Authority's Commercial Materials Recycling Facility (CMRF), one of five transfer stations, a Private Commercial Materials Recycling Facility (PCMRF) or any other sites designated by the Authority for recycling. The Authority or its contractor shall receive, process, dispose of and/or recover all Recyclable Materials delivered by or on behalf of the Town, at no charge to the Town, except for unacceptable loads as described below. Collection equipment must be of a type to provide for rear, side or front unloading and may be compartmentalized or in separate vehicles.

10. Improperly Prepared Recyclable Materials

When a collector's crew encounters improperly prepared materials or non-recyclable items, they must follow this procedure:

- A. The collector shall pickup all Recyclable Materials except for those contaminated by non-recyclable material or those which cannot be safely retrieved from the reusable containers. Improperly sorted materials or contaminated materials will be left in the reusable containers or temporarily removed and returned to the reusable containers. The collector shall leave an Authority and/or Town approved form on the material or in the container. The form will notify the resident or business that material has not been properly sorted, and will provide information on how to contact the Town or Authority recycling coordinator for further information. Upon request of the Town, the Authority will provide rejection procedure training for the route drivers. The Authority and the Town will consult and evaluate the extent of the need for such training, which shall be provided by the Authority.

As a means of strengthening the Town's ability to have its collector fulfill the Town's recycling needs, the Town agrees to notify and consult with the Authority when preparing the Town's future request for collection franchise bids.

- B. It shall be the responsibility of the Town or its collector to contact residents or businesses that repeatedly place improperly sorted materials in their designated container and inform and encourage them to properly sort materials. If the problem persists, the Town shall notify the Authority, who shall then assist the Town in resolving the problem.

11. Recycling Containers

The Authority shall provide yellow and blue eighteen (18) and ninety-six (96) gallon recycling containers. The yellow and blue colors reflect a consistent educational advertising effort through TV commercials, newsprint, radio, mailer, or other source. It is the Town's responsibility to make sure it or its collection contractor has equipment compatible to provide proper collection of these recycling containers without damage. The Town or its collection contractor shall be responsible for replacement of any recycling container(s) damaged during service at no additional cost to the Authority.

12. Compliance with Zoning Ordinances

Any transfer and/or storage of the Recyclable Materials shall be undertaken in a location suitable and adequate for such activity and shall comply with all local zoning ordinances and any other applicable local and state statutes, ordinances and regulations.

The Town further agrees to use its best efforts to amend or modify its appropriate zoning, building, or land development code to require new multi-family or commercial developments to provide adequate space for recycling containers.

13. Unacceptable Materials

Criteria have been established for acceptance of loads deemed suitable for processing at designated facilities. If the load contains in excess of 12% non-recyclable materials by volume, the receiving facility will reject the load. The Town or its contractor will be charged the actual disposal cost and a \$250.00 processing fee for any rejected load due to contamination or equipment mechanical failure. The Authority will notify the Town immediately of a contaminated load. If the problem of unacceptable loads persists, (more than two times in a month) the Authority may elect to monitor the route for proper sorting and tagging procedures, and/or make recommendations to the Town.

14. Promotion and Education Responsibilities

The Authority will provide recycling bins/containers and assist in promoting and educating residents within the Town in an effort to work together and increase recyclable tonnages.

15. Delivery of Collected Material

The Town agrees that it shall require that all Recyclable Materials separated from the normal waste stream that are collected by or on behalf of the Town shall be delivered to designated facilities. The Authority may, from time to time, undesignate a facility. The Town will take such action as is necessary and available to ensure against and prevent scavenging and unauthorized removal of such recyclables within the jurisdiction of the Town.

16. Term

This Agreement shall begin the date herein above and continue through September 30, 2013, and automatically renew for a period of five (5) years upon mutual agreement. Notwithstanding termination, any rights or duties imposed by law shall remain in effect.

This Agreement may be modified or terminated only by the written consent of both parties.

17. 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.

18. Notices.

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

For the Authority:

Solid Waste Authority of Palm Beach County
7501 N. Jog Road
West Palm Beach, Florida 33412
Attention: Executive Director

For the Town:

Town of _____

Attention: _____

19. 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.

This portion of page was intentionally left blank

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the day and year first above written:

As to the Authority:

WITNESSES:

SOLID WASTE AUTHORITY OF
PALM BEACH COUNTY

Mark Hammond
Executive Director

ATTEST:

SOLID WASTE AUTHORITY OF
PALM BEACH COUNTY

Sandra J. Vassalotti
Clerk to the Authority

ATTEST:

As to the Town:

Town Clerk

Town of _____

(Affix Municipal Seal)

Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Legal Counsel
Solid Waste Authority
of Palm Beach County

Town Attorney

Date:

Date: _____

TAB 5

**Town of Lake Park Town Commission
Agenda Request Form**

Meeting Date: March 12, 2008

Agenda Item No. Tab 5

- | | |
|---|--|
| <input type="checkbox"/> PUBLIC HEARING | <input checked="" type="checkbox"/> RESOLUTION |
| <input type="checkbox"/> ORDINANCE ON FIRST READING | <input type="checkbox"/> ORDINANCE ON SECOND READING |
| <input type="checkbox"/> BID/RFP Award | <input type="checkbox"/> DISCUSSION |
| <input type="checkbox"/> GENERAL APPROVAL OF ITEM | <input checked="" type="checkbox"/> CONSENT AGENDA |
| <input type="checkbox"/> Other: | |

SUBJECT: Authorization for a Change Work Order to decrease the Bayberry Drainage Improvements Contract by \$5,100 (net)

RECOMMENDED MOTION/ACTION: Approve Change Work Order

Approved by Town Manager *Al Davis* **Date:** 3/7/08

Virginia Martin, Grants Writer
Name/Title

March 3, 2008
Date of Actual Submittal

Originating Department: Grants	Costs: \$ Funding Source: Acct. #	Attachments: Letter from Boyle Letter from HCD Change Work Order Agreement Resolution
Department Review: <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development _____ <input type="checkbox"/> Finance _____	<input type="checkbox"/> Fire Dept _____ <input checked="" type="checkbox"/> Grants <u>GM</u> _____ <input type="checkbox"/> Human Resources _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____	<input type="checkbox"/> PBSO _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Town Clerk _____ <input checked="" type="checkbox"/> Town Manager _____
Advertised: Date: _____ Paper: _____ <input checked="" type="checkbox"/> 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 <u>GM</u> : Please initial one.

Summary Explanation/Background: A notice was received from Boyle Engineering and the County that based on the final measured quantities of material used in the Bayberry Drainage Project, the cost of the contract would be decreased by \$5,100. There was a decrease of \$2,374.69 in the amount to be paid to the contractor because the contract was not completed on time, and an increase of \$2,374.69 to be paid to Boyle Engineering to cover the cost of additional project oversight services for the extra time required to complete the contract.

RESOLUTION NO.

**A RESOLUTION OF THE TOWN COMMISSION OF
THE TOWN OF LAKE PARK, FLORIDA
AUTHORIZING THE MAYOR TO SIGN THE
CHANGE WORK ORDER FOR THE PHASE IIG
DRAINAGE IMPROVEMENT CDBG GRANT**

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 has entered into an Agreement with Palm Beach County (County”) on February 06, 2007, and approved by document R2007-0153 wherein the County agreed to pay \$45,353 of its Community Development Block Grant Funds to the Town for the installation of storm water drainage; and

WHEREAS, the Town has been presented a Change Order decreasing the contract amount by \$7,474.69 which amount includes:

1. A decrease of \$5,100 which is the adjustment to the contract amount based on final measured quantities.
2. A decrease of \$2,374.69 which is the cost for Boyle Engineering to provide additional project observation services as a result of the work not being completed on time.
3. The additional cost (\$2,374.69) will be added to the final Boyle invoice to the Town.

WHEREAS, the Palm Beach County Department of Housing and Community Development has approved the recommendation of Boyle Engineering to issue the Change Work Order pending approval by the Town of Lake Park.

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

this Resolution authorizing the Change Work Order #1 with Boyle Engineering and Almazan Brothers Construction, Inc.

SECTION 2. This Resolution shall take effect immediately upon its adoption.



**Housing and Community
Development**

Housing & Capital Improvements
160 Australian Avenue - Suite #500
West Palm Beach, FL 33406
(561) 233-3624
FAX: (561) 233-3661
www.pbcgov.com/pubinf/hcd

**Palm Beach County
Board of County
Commissioners**

Addie L. Greene, Chairperson

John F. Koons, Vice Chair

Karen T. Marcus

Mary McCarty

Burt Aaronson

Jess F. Santamaria

County Administrator

Robert Weisman, P.E.

*"An Equal Opportunity
Affirmative Action Employer"*

February 25, 2008

Mr. Jeff Renault, P.E.
Boyle Engineering Corporation
2090 Palm Beach Lakes Blvd., Ste 600
West Palm Beach, FL 33409

Re: ~~Town of Lake Park~~
Storm Drainage Improvements - Phase IIG / FY 06-07
HCD Change Order Approval

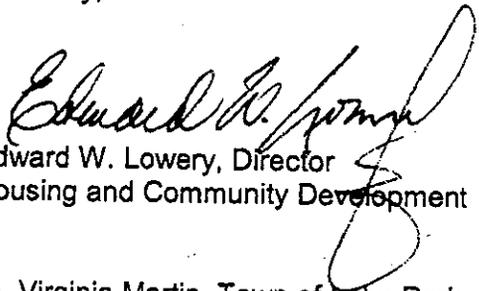
Dear Mr. Renault:

We are in receipt of your proposed Change Order # 1 for an decrease of \$7,474.69 to the construction contract with Almazan Brothers, Inc., in connection with the referenced project. Approval of this change order, which will decrease the contract amount from \$145,000 to \$137,525.31, is hereby provided.

Please furnish this office with an executed copy of this change order once it has been signed.

Should you require any further information regarding the above, please contact Amin Houry, Manager, Housing and Capital Improvements, at 561-233-3625.

Sincerely,


Edward W. Lowery, Director
Housing and Community Development

cc Virginia Martin, Town of Lake Park

S:\CapImprv\MUNICIPAL\LakePark\StrImp06-07\CO1Apprvl.wpd

2090 Palm Beach Lakes Blvd., Suite 600
West Palm Beach, FL 33409
TEL: (561)684-3375
FAX: (561)689-8531
www.boyleengineering.com

Employee Owned

February 27, 2008

Town of Lake Park
650 Old Dixie Highway
Lake Park, FL 33403

Attn: Kim Alexander
Public Works

Re: Drainage Improvements in the NTA – Phase IIG
Town of Lake Park

Dear Ms. Alexander:

Attached are four (4) copies of Change Order No. 1 (final) which have been executed by the contractor. We have discussed this change order with Mr. Amin Houry (Palm Beach County Housing and Community Development) and he is going to send the Town a letter stating that they are in agreement with the Town Commission approving this change order. Therefore, we recommend that the Town Commission approve Change Order No. 1. After approval, please have all four (4) copies executed, dated and return three (3) to this office. The fourth copy is for the Town's records.

After the Town approves Change Order No. 1 and after Mr. Houry confirms that all of the contractor's payrolls and other paperwork is complete, then we will submit the contractor's final payment request to the Town for approval and payment.

The Change Order No. 1 shows the contract amount decreased by \$7,474.69. This decrease includes the following items:

1. A decrease of \$5,100 which is the adjustment to the contract amount based on final measured quantities.
2. A decrease of \$2,374.69 which is the cost for Boyle Engineering to provide additional project observation services as a result of the work not being completed on time. This additional cost (\$2,374.69) will be added to the final Boyle invoice to the Town.

Kim Alexander
Town of Lake Park
February 27, 2008
Page Two

Should you have any questions, please contact me.

Very truly yours,

Boyle Engineering Corporation

A handwritten signature in black ink, appearing to read "Jeffrey D. Renault". The signature is written in a cursive style with a large, stylized initial "J".

Jeffrey D. Renault, P. E.

JDR/dw

Encl.

cc: Amin Houry, PBCHCD w/encl.
Almazan w/encl.

Change Order

No. One (1)

Date of Issuance: February 19, 2008 Effective Date: February 19, 2008

Project:	Owner: Town of Lake Park	Owner's Contract No.: 02-0006K
Contract: Drainage Improvements -Phase IIG, Town of Lake Park	Date of Contract: <u>July 9, 2007</u>	
Contractor: Almazan Brothers, Inc.	Engineer's Project No.: 02-0006K (28629.00)	

357 Kelly Drive, West Palm Beach, FL 33411

The Contract Documents are modified as follows upon execution of this Change Order:

- Description: 1. Adjust contract amount based on final measured quantities.
 2. Adjust contract amount based on late completion.

Attachments: (List documents supporting change):

1. See attached final payment request (\$5,100)
2. Based on additional observation costs by Boyle (\$2,374.69) (see attachment)

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price: \$ <u>145,000</u>	Original Contract Times: <input type="checkbox"/> Working days <input checked="" type="checkbox"/> Calendar days Substantial completion (days or date): <u>45 days</u> Ready for final payment (days or date): <u>60 days</u>
[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____: \$ <u>-</u>	[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____: Substantial completion (days): _____ Ready for final payment (days): _____
Contract Price prior to this Change Order: \$ <u>145,000</u>	Contract Times prior to this Change Order: Substantial completion (days or date): <u>45 days</u> Ready for final payment (days or date): <u>60 days</u>
[Increase] [Decrease] of this Change Order: \$ <u>(7,474.69)</u>	[Increase] [Decrease] of this Change Order: Substantial completion (days or date): _____ Ready for final payment (days or date): _____
Contract Price incorporating this Change Order: \$ <u>137,525.31</u>	Contract Times with all approved Change Orders: Substantial completion (days or date): <u>45 days</u> Ready for final payment (days or date): <u>60 days</u>

Boyle Engineering Corporation RECOMMENDED: By: <u>[Signature]</u> Engineer (Authorized Signature) Date: <u>2-19-08</u>	Town of Lake Park ACCEPTED: By: <u>[Signature]</u> Owner (Authorized Signature) Date: <u>2-25-08</u>	Almazan Brothers Const., Inc. ACCEPTED: By: <u>[Signature]</u> Contractor (Authorized Signature) Date: <u>3/7/08</u>
Approved by Funding Agency (if applicable): _____ Date: _____		

END OF SECTION

Schedule "A"

APPLICATION FOR PAYMENT

Date: 2/19/08 **Job. No.** 02-0006K
From: SUBCONTRACTOR
 Almazan Brothers, Inc.
 357 Kelly Drive
 West Palm Beach, FL 33411
Application for Payment Number: Final

To: Town of Lake Park
 535 Park Avenue
 Lake Park, FL 33403
Owner: Town of Lake Park
Project: Drainage Improvements - Phase IIG

Payment Period: _____ through _____ 2/19/08
 Original Contract Amount \$ 145,000.00

Approved Change Order No's: _____ \$ (7,474.69)
 (Per attached Schedule of Values)
 Total Revised Contract Amount: \$ 137,525.31

Value of Original Contract Completed to Date \$ 145,000.00
 (Per attached Schedule of Values)
 Value of **Approved** C.O.'s Completed to Date \$ (7,474.69)
 (Per attached Schedule of Values)

Value of Materials Stored on Jobsite \$ -
 (Per attached Schedule of Values)

TOTAL COMPLETED TO DATE \$ 137,525.31

Less 0% Retainage \$ -
 Subtotal Less Retainage \$ 137,525.31
 Less Previous Payments \$ 114,516.00
 Less Previous Unpaid Requests \$ -

AMOUNT DUE THIS REQUEST \$ 23,009.31

AFFIDAVIT

The undersigned hereby certifies that the accounts of all subcontractors and suppliers for all materials and supplies furnished, and labor and services of every nature performed by the undersigned for use on or in connection with the Project, will be paid in full through the above mentioned pay period immediately upon receipt of payment from Almazan Brothers, Inc. (except as identified in the attached sheet hereto). The undersigned further warrants that waiver and lien releases for the Project have been received from all subcontractors and suppliers who have furnished services, labor and/or materials to the undersigned for use in the Project and those releases have been forwarded to Almazan Brothers, Inc.; and the Unconditional Waiver will be

PROJECT: Drainage Improvements - Phase IIG
ALMAZAN BROTHERS, INC.
 357 Kelly Drive
 West Palm Beach, FL 33411

Page 1 of this Application and Certificate of Payment,
 containing Contractor's signed Certification is attached.
 In tabulations below, totals and sub-totals must coincide
 with updated Contract Amount.

CONTRACT NO.
 APPLICATION NO.
 PERIOD FROM
 TO

Final
 2/19/08

A Item No.	B Item	C Qty	D Unit	E CONTRACT		F Schedule of Values (\$)	G QUANTITIES		H Current Invoice	I Total (G+H)	J Previous Invoices	K AMOUNT (\$)		L Total (J+K)	M Balance To Finish (F-L)	N % Complete (L/F)	O Retainage (\$) (Lx10%)			
				Unit Price (\$)	Unit		Previous Invoices	Current Invoice				Current Invoice								
1	CLEARING & GRUBBING	1	LS	28,920.00		28,920.00	1.00	0.00	1.00	28,920.00	0.00	0.00	28,920.00	0.00	100.0%	2892.00				
2	15" HDPE PIPE	79	LF	30.00		2,370.00	77.00	0.00	77.00	2,310.00	0.00	0.00	2,310.00	60.00	97.5%	231.00				
3	18" HDPE PIPE	670	LF	35.00		23,450.00	540.00	0.00	540.00	18,900.00	0.00	0.00	18,900.00	4,550.00	80.6%	1890.00				
4	EXFILTRATION TRENCH	210	LF	60.00		12,600.00	210.00	0.00	210.00	12,600.00	0.00	0.00	12,600.00	0.00	100.0%	1260.00				
5	TYPE C' INLET	4	EA	2,400.00		9,600.00	4.00	0.00	4.00	9,600.00	0.00	0.00	9,600.00	0.00	100.0%	960.00				
6	CONNECT TO EXISTING	1	EA	2,000.00		2,000.00	1.00	0.00	1.00	2,000.00	0.00	0.00	2,000.00	0.00	100.0%	200.00				
7	6" STABILIZED SHOULDER	795	SY	8.00		6,360.00	0.00	795.00	795.00	6,360.00	0.00	6,360.00	6,360.00	0.00	100.0%	636.00				
8	SOLID SOD	1,595	SY	5.00		7,975.00	1258.00	0.00	1258.00	6,290.00	0.00	6,290.00	6,290.00	1,685.00	78.9%	629.00				
9	4" THICK CONCRETE SAW	150	SY	40.00		6,000.00	68.0	0.0	68.00	2,720.00	0.00	2,720.00	2,720.00	3,280.00	45.3%	272.00				
10	6" THICK CONCRETE DRIVEWAY	565	SY	45.00		25,425.00	500.0	0.0	500.00	22,500.00	0.00	22,500.00	22,500.00	2,925.00	88.5%	2250.00				
11	REPLACE EX. WATER MAIN	70	LF	200.00		14,000.00	107.0	0.0	107.00	21,400.00	0.00	21,400.00	21,400.00	-7,400.00	152.9%	2140.00				
12	PAVEMENT REPLACEMENT	105	SY	60.00		6,300.00	0.0	105.0	105.00	6,300.00	0.00	6,300.00	6,300.00	0.00	100.0%	630.00				
13	CHANGE ORDER	1	LS	-2,374.69		-2,374.69	0	1	1.00	0.00	0.00	-2,374.69	-2,374.69	0.00	100.0%	(237.47)				
TOTALS														142,625.31	127,240.00	10,285.31	137,525.31	5,100.00	96.4%	13752.53

obtained from ALL subcontractors and suppliers and submitted to Almazan Brothers, Inc. upon receipt of payment. This affidavit is made for the purpose of inducing Almazan Brothers, Inc. to make payment to the undersigned for labor, materials, and/or services furnished through the abovementioned pay period.

Trade Contractor:

Almazan Brothers, Inc.

Sign: Jesus Almazan

Print: Jesus Almazan

Title: Owner

STATE OF FLORIDA

COUNTY OF Duval

The foregoing instrument was acknowledged before me on (date) 2-19-11

by (name) Jesus Almazan as (title) Owner

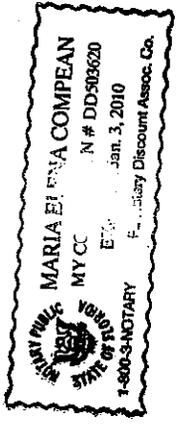
of (company) Almazan Brothers corporation/partner/proprietor.

He/she is personally known to me or has produced

Notary Signature [Signature]

My Commission Expires _____

(Notary Seal)



Billing Worksheet

As of 1/29/08

Tuesday, January 29, 2008 - 7:29:14 AM

Billing Status	Date	Description	Hours/ Units	Billing Rate	Billing Amount	TRC / PW / Account
----------------	------	-------------	--------------	--------------	----------------	--------------------

Project Number: 28629.00 Drainage Improvements Phase II G

Phase Number: 0034 Project Observation Services

SA Manager:

Total Compensation: 6,200.00

Rev Type: W3

Project Manager: John Donahue

Client Name: Town of Lake Park

Labor:

B	11/6/07	McKenzie, David	7.00	72.42	506.94	00057
B	11/12/07	McKenzie, David	1.50	72.42	108.63	00057
B	11/14/07	McKenzie, David	1.50	72.42	108.63	00057
B	11/15/07	McKenzie, David	1.50	72.42	108.63	00057
B	12/4/07	McKenzie, David	1.00	74.19	74.19	00057
B	12/7/07	McKenzie, David	1.00	74.19	74.19	00057
B	12/11/07	McKenzie, David	1.50	74.19	111.29	00057
B	12/12/07	McKenzie, David	2.00	74.19	148.38	00057
B	12/3/07	Renault, Jeff - Project closeout.	1.50	141.07	211.61	00013
B	12/12/07	Renault, Jeff - Final inspection, prepare punchlist.	3.00	141.07	423.21	00013
B	12/12/07	Williams, Deborah - Type punchlist.	.50	59.89	29.95	00095
Total Billable Labor			22.00		1,905.65	
Total Labor			22.00		1,905.65	

Units:

B	11/9/07	In house Recoverables Charges B:8.5 OK COMM @ 0.52	8.500	.52	4.42	7005 COMM
B	11/9/07	PC Recovery Charge B:8.5 LAN @ 1.34	8.500	1.34	11.39	7005 LAN
B	11/9/07	In house Recoverables Charges B:8.5 OK REPRO @ 0.53	8.500	.53	4.51	7005 REPRO
B	11/9/07	Consolidated posting B:9.0 WAN @ 1.57	9.000	1.57	14.13	8099WAN
B	12/7/07	In house Recoverables Charges B:1.0 WP COMM @ 0.52	1.000	.52	.52	7002 COMM
B	12/7/07	PC Recovery Charge B:1.0 LAN @ 1.34	1.000	1.34	1.34	7002 LAN
B	12/7/07	In house Recoverables Charges B:1.0 WP REPRO @ 0.53	1.000	.53	.53	7002 REPRO
B	12/7/07	In house Recoverables Charges B:2.5 OK COMM @ 0.52	2.500	.52	1.30	7005 COMM
B	12/7/07	PC Recovery Charge B:2.5 LAN @ 1.34	2.500	1.34	3.35	7005 LAN
B	12/7/07	In house Recoverables Charges B:2.5 OK REPRO @ 0.53	2.500	.53	1.33	7005 REPRO
B	12/7/07	Consolidated posting B:4.0 WAN @ 1.57	4.000	1.57	6.28	8099WAN
B	11/16/07	In house Recoverables Charges B:3.0 OK COMM @ 0.52	3.000	.52	1.56	7005 COMM
B	11/16/07	PC Recovery Charge B:3.0 LAN @ 1.34	3.000	1.34	4.02	7005 LAN
B	11/16/07	In house Recoverables Charges B:3.0 OK REPRO @ 0.53	3.000	.53	1.59	7005 REPRO
B	11/16/07	PC Recovery Charge B:2.0 WAN @ 1.57	2.000	1.57	3.14	8099WAN
B	12/14/07	In house Recoverables Charges B:3.5 WP COMM @ 0.52	3.500	.52	1.82	7002 COMM
B	12/14/07	PC Recovery Charge B:3.5 LAN @ 1.34	3.500	1.34	4.69	7002 LAN
B	12/14/07	In house Recoverables Charges B:3.5 WP REPRO @ 0.53	3.500	.53	1.86	7002 REPRO
B	12/14/07	In house Recoverables Charges B:3.5 OK COMM @ 0.52	3.500	.52	1.82	7005 COMM

Billing Worksheet

As of 1/29/08

Tuesday, January 29, 2008 - 7:29:14 AM

Billing Status	Date	Description	Hours/ Units	Billing Rate	Billing Amount	TRC / PW /Account
B	12/14/07	PC Recovery Charge B:3.5 LAN @ 1.34	3.500	1.34	4.69	7005 LAN
B	12/14/07	In house Recoverables Charges B:3.5 OK REPRO @ 0.53	3.500	.53	1.86	7005 REPRO
B	12/14/07	Consolidated posting B:7.0 WAN @ 1.57	7.000	1.57	10.99	8099WAN
Total Billable Units					87.14	
Total Units					87.14	
Total for 0034					1,992.79	

Phase Number: 0063 Bid Documents

SA Manager:

Total Compensation: 500.00

Rev Type: W3

Project Manager: John Donahue

Client Name: Town of Lake Park

Labor:

B	11/16/07	McKenzie, David	1.00	72.42	72.42	00057
B	11/19/07	McKenzie, David	1.00	72.42	72.42	00057
B	11/20/07	McKenzie, David	1.00	72.42	72.42	00057
B	11/21/07	McKenzie, David	1.00	72.42	72.42	00057
B	11/26/07	McKenzie, David	1.00	72.42	72.42	00057
Total Billable Labor			5.00		362.10	
Total Labor			5.00		362.10	

Units:

B	11/9/07	In house Recoverables Charges B:5.0 OK COMM @ 0.52	5.000	.52	2.60	7005 COMM
B	11/9/07	PC Recovery Charge B:5.0 LAN @ 1.34	5.000	1.34	6.70	7005 LAN
B	11/9/07	In house Recoverables Charges B:5.0 OK REPRO @ 0.53	5.000	.53	2.65	7005 REPRO
B	11/9/07	Consolidated posting B:5.0 WAN @ 1.57	5.000	1.57	7.85	8099WAN
Total Billable Units					19.80	
Total Units					19.80	
Total for 0063					381.90	
Total for 28629.00					2,374.69	

TAB 6

**Town of Lake Park Town Commission
Agenda Request Form**

Meeting Date: **March 12, 2008**

Agenda Item No. *Tab 6*

- | | |
|--|---|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> RESOLUTION |
| <input type="checkbox"/> Ordinance on Second Reading | <input type="checkbox"/> DISCUSSION |
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> BID/RFP AWARD |
| <input type="checkbox"/> ORDINANCE ON FIRST READING | <input checked="" type="checkbox"/> CONSENT AGENDA |
| <input type="checkbox"/> GENERAL APPROVAL OF ITEM | |
| <input type="checkbox"/> Other: | |

SUBJECT: Award of Contract for Final Phase of Seawall Replacement at Lake Shore Park to Vance Construction

RECOMMENDED MOTION/ACTION: Approve

Approved by Town Manager

W. Davis

Date: *3/3/08*

Name/Title

Date of Actual Submittal

Originating Department: <p align="center">Town Manager</p>	Costs: \$224,500 Funding Source: F.I.N.D. Grant \$205,000 Reserves: \$19,500 As approved by Commission on January 16, 2008	Attachments: Proposal, Engineer's Letter, Town of Palm Beach Bid Award Contract, Resolution Accepting F.I.N.D Grant and Authorizing Expending Reserves for Town's Match, Contract Documents, Permit
Department Review: <input type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
Advertised: Date: _____ Paper: _____	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must	Yes I have notified everyone _____ OR Not applicable in this

[] Not Required	be filled out to be on agenda.	case _____: Please initial one.
------------------	--------------------------------	------------------------------------

Summary Explanation/Background: The Town applied for and was awarded a 49% - 51% matching grant from Florida Inland Navigation District (F.I.N.D.) for the final phase of the Seawall Replacement Project at Lake Shore Park. F.I.N.D.'s 49% contribution is \$205,000 and the Town's 51% contribution is \$214,000.

Cutcher and Associates designed the final phase of the project and is recommending award to The Vance Construction Co. based on a recent competitively bid and awarded breakwater and improvements project for Peanut Island in the Town of Palm Beach. The Vance Construction Company's proposal for Lake Shore Park Seawall Replacement Project (\$224,500) came in under the engineer's estimate.

The scope of the Lake Shore Seawall Project consists of replacing the existing seawall only. It does not include the "upland" work for sidewalk replacement and landscaping. Staff opted to contract the sidewalk and landscaping work directly with the Town's sidewalk and landscape contractors in order to save on sub-contracting "mark up" fees.

CUTCHER AND ASSOCIATES, INC.
Coastal Engineers

Voice: (561) 748-6745
Fax: (561) 748-6865
E-Mail: r.berry@cutcherassociates.com

752 US Highway 1
Tequesta, FL 33469

February 1, 2008

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

RE: Engineers Estimate – Lake Shore Park Seawall

Dear Maria:

The engineers estimate for the replacement of approximately 220 linear feet of seawall at Lake Shore Park is \$242,550.00. This is based on values obtained from similar projects and includes an estimated unit price of \$1,050 per linear foot of wall (\$231,000) and a 5% mobilization / demobilization charge (\$11,550). This estimate does not include any bonding fees or upland site improvements.

We have received a quotation for this work from The Vance Construction Company for a total of \$224,500.00. This proposal, dated 1/25/08, includes a linear foot charge of \$975 (\$214,500) and a mob/demob charge of \$10,000. This is a fair price for this work. We recommend using The Vance Construction Company for this project.

Please contact me with any questions you may have regarding this estimate. With your approval, we will prepare an EJCDC contract.

Sincerely,

Bob Berry
Marine Engineer

Cc: John Downes – Calvin & Giordano



7166 Interpace Road
 Riviera Beach FL 33407
 561/671-1991 (O)

Post Office Box 4592
 West Palm Beach FL 33402
 561/671-1981 (F)

PROPOSAL - CONTRACT

PROPOSAL SUBMITTED TO Town of Lake Park Attn: Maria Davis	PHONE 881-3304 CELL: FAX 881-3314	DATE 1/25/08
STREET 535 Park Avenue	JOB NAME <i>SHORE PARK</i> Lake Park Marina Seawall Replacement	
CITY, STATE, ZIP CODE Lake Park, Fl 33403	JOB LOCATION Lake Park, Florida	

The Vance Construction Co. hereby proposes the following:

ITEM	DESCRIPTION	PRICE	UNIT	TOTAL
1	Mobilization In	\$5,000.00	LS	\$5,000.00
2	Construction of Seawall as per Calvin, Giordano & Associates site plans.	\$975.00	LF	\$214,500.00
3	Molization Out	\$5,000.00	LS	\$5,000.00

** No upland site improvements needed per engineer
 ** Vance Construction Co. is not responsible for irrigation, landscape, utilities

THE VANCE CONSTRUCTION CO.

ACCEPTED BY:

BY:

SIGNATURE

Town of Lake Park

CUSTOMER NAME

By: _____

Title: _____

Date: _____

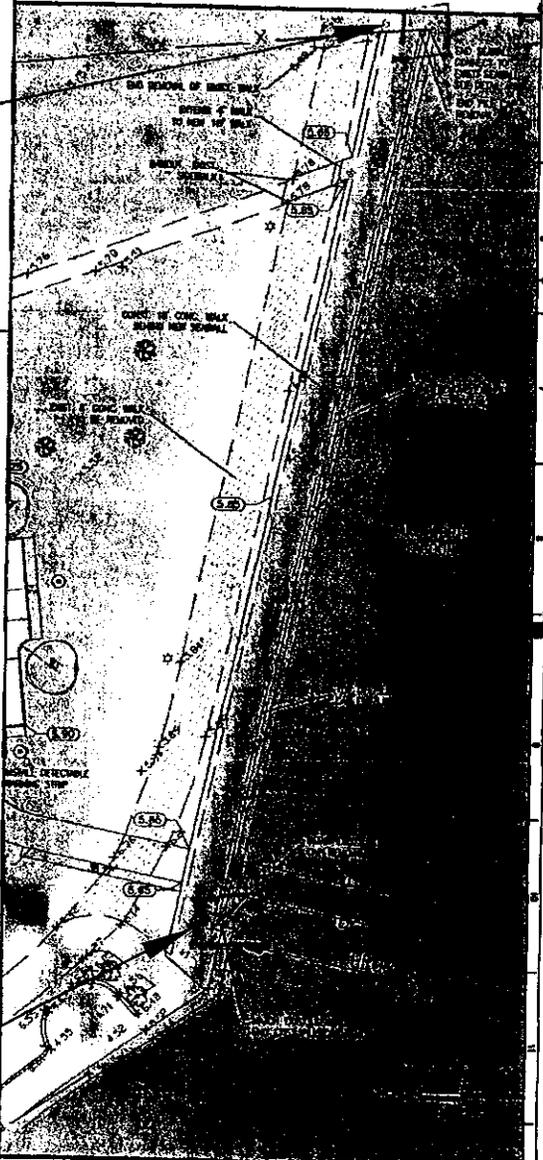
NOTE: This proposal be withdrawn by us if not accepted within _____ days.

ACCEPTANCE OF PROPOSAL

The above prices and conditions are satisfactory and hereby accepted. You are authorized to do the work as specified. The above quotation is subject to all terms and conditions of both sides hereof, and becomes a contract when acceptance is signed by an authorized agent of each party.

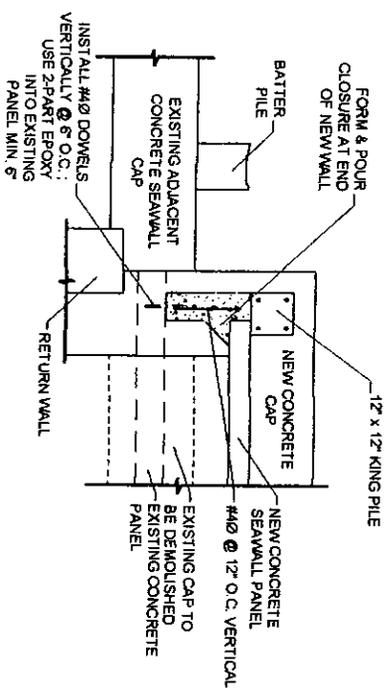
DATE	BY	REVISION

THIS GRAPHIC
PROVIDED BY CGA, INC.



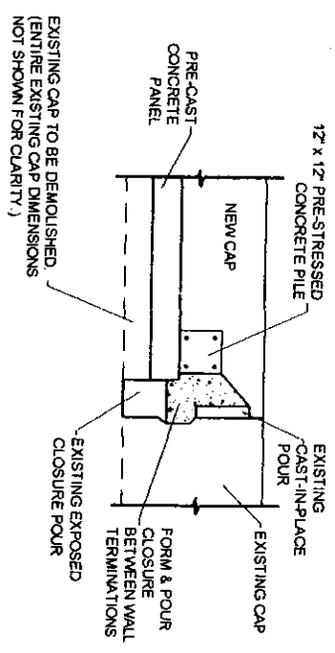
SEAWALL: NORTH TERMINATION
DETAIL - PLAN VIEW
SCALE = 1:16
[SEAWARD SIDE]

NOTE: NO GROUT
KEYWAY @ NORTH LIMITS
OF CONSTRUCTION/
CONCRETE PANELS



NOTE: NO GROUT
KEYWAY @ SOUTH LIMITS
OF CONSTRUCTION/
CONCRETE PANELS

SEAWALL: SOUTH TERMINATION
DETAIL - PLAN VIEW
SCALE = 1:16
[SEAWARD SIDE]



NO.	DATE	DESCRIPTION	BY	CHK.

NO.	DATE	DESCRIPTION	BY	CHK.

PHASE III - SEAWALL WALL TERMINATIONS

TOWN OF LAKE PARK
LAKESHORE PARK SEAWALL

CUTCHER & ASSOCIATES, INC.
COASTAL ENGINEERS
1725 North U.S. Highway 1
Tampa, Florida 33609
Tel: (813) 746-0155 Fax: (813) 746-6665
Email: info@cutcher-engineers.com
P.E. No. 57172 / Auto. Cert. No. 1841

DATE	BY	REVISION

NOTE: NOT TO BE USED FOR CONSTRUCTION UNLESS APPROVED.
APPROVED: _____ DATE: _____ DATE PRINTED: 21 NOVEMBER 2007

LEGEND

CONTRACT

THIS CONTRACT made and entered into this 17 day of July, 2007, by and between the Town of Palm Beach, Florida, hereinafter referred to as the TOWN, and Vance Construction Company, hereinafter referred to as CONTRACTOR, whose address is P.O. Box 4592, West Palm Beach, FL 33402.

WITNESSETH, that the CONTRACTOR and the TOWN, for the considerations hereinafter named, agrees as follows:

The CONTRACTOR hereby agrees to furnish all the materials and all of the equipment and labor necessary, and to perform all of the work shown on the drawings and described in the Specifications for the project entitled:

SEALED BID NO. 2007-11

REACH 7 ARTIFICIAL REEF MITIGATION PROJECT

TOWN OF PALM BEACH, FLORIDA

All in accordance with the requirements and provisions of the following documents which are hereby made a part of this Contract:

- A. Plans prepared by Coastal Planning and Engineering, Inc., numbered sheets 1 through 5, inclusive, dated March 28, 2007.
- B. Technical Specifications.
- C. Addenda No. 1 as prepared by Coastal Planning and Engineering dated April 18, 2007, and Addendums number 2 and 3, prepared by the Town of Palm Beach, both dated April 26, 2007.
- D. Instructions to Bidders and General Terms & Conditions.

CONTRACT SUM PROPOSAL

The Contractor herein proposes as noted below and contracts with the Town of Palm Beach for the Base Bid, Unit Prices, and those Alternate Bids elected by the Town.

SEALED BID NO. 2007-11
TOWN OF PALM BEACH, FLORIDA

Contract Sum/Agreement Acceptance

The Town of Palm Beach accepts the Contractor's Proposal and will pay to the Contractor for faithful performance of the contract, in lawful money of the United States of America, subject to the additions and deductions as provided in the Contract Documents.

Base Bid (Including Allowances).....\$ 723,100

Alternate Bid Nos.....\$ -0-

For a Total Contract Sum of:

Seven Hundred Twenty Three Thousand One Hundred dollars....\$ 723,100

Bid awarded by Palm Beach Town Council on May 7, 2007 by Resolution No. 24-07.

WITNESS:

Cheryl Blean
Gayle Jordan

TOWN OF PALM BEACH, FLORIDA

By: Peter B. Elwell
Peter B. Elwell, Town Manager

Attest: Juanita Eithard

(TOWN SEAL)

RECOMMEND APPROVAL

[Signature], 2007
[Signature]
H. Paul Brazil, Director of Public Works

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:
Counsel for Town of Palm Beach

7/18/07, 2007
By: [Signature]
John C. Randolph, Town Attorney

other costs and expenses relating thereto, even if such claim is groundless, false or fraudulent. Notwithstanding the foregoing, Contractor's Indemnity shall not extend to liability for damages to persons or property to the extent such damage was caused by any act, omission, or default of the Town, or by the Town's officers, agents and employees.

38.

PERFORMANCE AND PAYMENT BONDS

Contractor shall provide to the Town, prior to commencing the Work, a Performance Bond covering the full, faithful and complete performance of this Contract, and a Payment Bond covering full, faithful and complete payment of all obligations arising under this Contract. The Performance Bond and the Payment Bond shall incorporate by reference and be deemed to include all of the agreements and obligations of Contractor under this Contract, including, but without limitation, specific undertaking of the Surety to pay any Liquidated Damages hereunder, as well as any obligations as provided in the bidding requirements or specifically required in any of the Contract Documents related to this Contract. "Conditional" Payment Bonds pursuant to Section 713.20 of the Florida Statutes are not acceptable and will not meet the requirements of this paragraph. The Surety must be a surety licensed to write Performance and Payment Bonds meeting these requirements in Florida. For reasonable cause shown, the Town shall have the right to reject Contractor's Surety and require the Performance Bond and Payment Bonds to be issued by another surety. The Performance Bond shall remain in full force and effect for at least one (1) year after the date of Substantial Completion. It is the Contractor's obligation to record copies of the Payment and Performance Bonds among the Public Records of Palm Beach County, Florida.

39. RECORD AND AS-BUILT DRAWINGS

The Contractor is responsible for maintaining a record and "as-built" set of drawings on the jobsite which are to be continuously updated. This set of drawings shall indicate any and all changes made on the job. This record and "as-built" drawing set shall be turned over to the Town upon completion of work. Final Payment will not be made until the record and "as built" drawings are properly completed and turned over to the Town. The drawings shall comply with the applicable sections of the Technical Specifications.

40. SHOP DRAWINGS, SAMPLES AND SUBMITTALS

To the extent required by the plans and specifications, the Contractor shall prepare and submit to the Engineer (or Architect, if applicable), shop drawings, product specifications, samples and similar submittals in a manner that will allow reasonable time for review so as not to cause any delay in the work. Approval of the same by the Engineer (or Architect, if applicable) shall not relieve the Contractor from errors or deviations from the Contract Documents in any manner including without limitation, any errors in the submittals themselves, or in Contractor's performance of the Work. Immediately upon receipt of the Notice to Proceed, the Contractor shall submit a schedule of Shop Drawings and Samples to the Engineer for approval. After checking and verifying all field measurements, the Contractor shall submit to the Engineer for

RESOLUTION NO. 07-01-08

Certification
Victoria Mendez, Clerk of the Town of Lake Park, Florida, do hereby certify that the foregoing is a true and correct copy of the original instrument as contained in the original records of the Town. Witness my hand and the official seal of the Town of Lake Park This 15 day of January, 2008
Town Seal
Victoria Mendez
Town Clerk

FLORIDA

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA ACCEPTING A GRANT FROM THE FLORIDA INLAND NAVIGATION DISTRICT IN THE AMOUNT OF \$205,000.00, FOR THE PROJECT ENTITLED THE "LAKE SHORE PARK SEAWALL REPLACEMENT" AND WHICH HAS BEEN ASSIGNED FIND GRANT NUMBER: PB-LP-07-124; WITH SAID GRANT FUNDS TO BE USED FOR THE DEMOLITION AND REPLACEMENT OF THE REMAINING OLD SEAWALL AT LAKE SHORE PARK FOR THE PERIOD OF OCTOBER 15, 2007 THROUGH SEPTEMBER 1, 2009; AND APPROPRIATING FUNDS IN THE AMOUNT OF \$214,000 FROM THE CAPITAL PROJECTS FUND #302 TO SATISFY THE REQUIRED TOWN MATCH; AND PROVIDING AN EFFECTIVE DATE.

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, at its February 21, 2007 meeting, the Town of Lake Park authorized the Town to apply for financial assistance from the Florida Inland Navigation District (FIND) funding assistance program; and

WHEREAS, the Town Commission agrees to provide matching funds for 51% of the project in the amount of \$214,000; and

WHEREAS, the Town Commission has determined that it is in the best interests of the citizens of the Town of Lake Park to execute the Project Agreement with the Florida Inland Navigation District; and

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

- Section 1. The foregoing whereas clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution.
- Section 2. The Town Commission hereby authorizes the Mayor to execute the Project Agreement with the Florida Inland Navigation District.
- Section 3. This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Commissioner Carey, who moved its adoption. The motion was seconded by Commissioner Balius, and upon being put to a roll call vote, the vote was as follows:

	A YE	N AY
MAYOR PAUL W. CASTRO	<u>Absent</u>	<u> </u>
VICE-MAYOR ED DALY	<u>✓</u>	<u> </u>
COMMISSIONER CHUCK BALIUS	<u>✓</u>	<u> </u>
COMMISSIONER JEFF CAREY	<u>✓</u>	<u> </u>
COMMISSIONER PATRICIA OSTERMAN	<u>✓</u>	<u> </u>

The Town Commission thereupon declared the foregoing Resolution NO. 07-01-08 duly passed and adopted this 16 day of January, 2008.

TOWN OF LAKE PARK, FLORIDA

BY: *Paul W. Castro*
 for PAUL W. CASTRO
 MAYOR

ATTEST:

Vivian Mendez
 VIVIAN MENDEZ
 TOWN CLERK



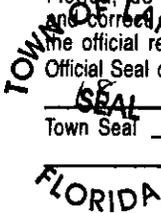
Approved as to form and legal sufficiency:

Thomas J. Baird
 for THOMAS J. BAIRD
 TOWN ATTORNEY

Vivian Mendez Certification
 I, *Vivian Mendez* Clerk of the Town of Lake Park, Florida, do hereby certify that the foregoing is a true and correct copy of the original instrument as contained in the official records of the Town. Witness my hand and the Official Seal of the Town of Lake Park This

16 day of January, 2008

Vivian Mendez
 Town Seal
 Town Clerk



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

THIS AGREEMENT is dated as of the 12 day of March, 2008, and between the Town of Lake Park (hereinafter called OWNER) and The Vance Construction Company, 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:

The construction of approximately 220 feet of concrete seawall within 12 inches of an existing derelict seawall. The project location is on the western shore of the ICWW in Lake Park, Florida. The work includes partial demolition of the existing concrete cap to facilitate installation of the new wall components. 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 – Lake Shore Park Concrete Seawall Replacement

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 June 15, 2008 and shall be performed under a Florida Department of Environmental Protection Letter of Exemption, No. 50-0140569-005. Substantial Completion requires that all construction components be installed and functional on or before June 1, 2008 and all Work be completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions on or before June 15, 2008.

Notice of Award	March 13, 2008
Receipt of Performance Bond Payment, Bond Insurance, and Agreement	By March 24, 2008
Pre-Construction Meeting	March 25, 2008
Notice to Proceed	March 26, 2008
Start Date	March 26, 2008
Substantial Completion Date	June 1, 2008
Final Completion Date	June 15, 2008

Article 4. CONTRACT PRICE.

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 4.1 below:

I. *The construction of approximately 220 feet of concrete seawall within 12 inches of an existing derelict seawall. The project location is on the western shore of the ICWW in Lake Park, Florida. The work includes partial demolition of the existing concrete cap to facilitate installation of the new wall components. The work includes all materials, labor and equipment to complete the project in accordance with the plans and specifications.*

4.1. for all Work a Lump Sum of:

<u>Two Hundred and Twenty Four Thousand, Five Hundred Dollars and no cents</u>	<u>(\$224,500.00)</u>
(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 General Conditions:

Article 5. PAYMENT PROCEDURES.

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

5.1. Progress Payments; Retainage. OWNER shall make one 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 General and Supplemental Conditions.

5.1.1 Retainage. Payment will be subject to retainage held by the Owner as provided in SC-14.1.3

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 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 7, inclusive).
- 8.2. Exhibits to this Agreement (1 page – Proposal for Work from Vance Construction, Inc.).
- 8.3. Performance, Payment, and other Bonds, consisting of _____ pages.
- 8.4. Notice to Proceed.
- 8.5. General Conditions (pages 1 to 70 inclusive).
- 8.6. Specifications bearing the title TECHNICAL SPECIFICATIONS, and ENVIRONMENTAL PROTECTION consisting of 2 divisions.
- 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 – LAKE SHORE PARK CONCRETE SEAWALL REPLACEMENT

[Fill in, and, if a set of Drawings is not attached to each signed counterpart of Agreement, so indicate in which case OWNER and CONTRACTOR should initial or otherwise appropriately identify each Drawing.]

8.8. Addenda numbers ____ to ____, inclusive.

[Those Addenda which pertain exclusively to the bidding process need not be listed.]

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 _____, 2008 (which is the Effective Date of the Agreement).

OWNER Town of Lake Park

CONTRACTOR Vance Construction

Company, Inc.

By: _____

By: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest _____

Attest _____

Address for giving notices

Addresses for giving notices

Ms. Maria Davis – Town Manager

Mr. Jim Vance

Town of Lake Park

535 ParkAve.

Lake Park, Florida 33403

License No. _____

Agent for service of process: _____

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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 that 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.
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.
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 TOWN OF LAKE PARK, FLORIDA, which is the 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.
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 Work is complete and ready for final payment, except for minor corrective or "punch list" items not requiring additional installation of piles and panels, casting, formwork, tierods and deadmen. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work, refer to Substantial Completion thereof.
45. *Successful Bidder*—A responsible Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—None.
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 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).

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 shall deliver copies of the required certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request), which the Contractor is required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

- A. Owner shall furnish the Contractor with five (5) copies of the Contract Documents at no cost for use during construction. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement.

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 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.

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.

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:
 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. 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.

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.
- B. 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:* None.
 - 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 if provided, but such reports and drawings are not Contract Documents. Except for such reliance on such "technical data," Contractor may not rely upon, or make any claim against Owner and/or Engineer, or any of

their respective 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. the Contractor's interpretation of, or conclusion drawn from, any "technical data" or any such other data, interpretations, opinions, or information.

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 and the Contractor's notice shall provide detailed information about the subsurface and/or physical conditions discovered by the Contractor. 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 from the Engineer or the Owner.

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, may in the sole discretion of the Owner, be equitably adjusted to the extent that the existence of such differing subsurface or physical condition unequivocally causes an quantifiable increase or decrease in Contractor's cost of, or time required for, the 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 submitted its Bid and/or at the time the Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the issuance of a Notice of Award of the Contract by the Owner and/or the Contractor 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 contiguous areas which a reasonable bidder would have conducted as due diligence prior to submitting a Bid or if required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's submitting a Bid and/or executing a contract and/or making a 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 whether the Contractor is entitled to a change in the Contract Price or Contract Time or both, and/or the amount of the change, if any, either party may submit a Claim 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.
 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 herein), 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 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 a change is warranted and directly 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 provided that the Contractor did not know of, and could not reasonably have been expected to be aware of, or to have anticipated the undisclosed Underground Facility. 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 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*: None.
- 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 if any are provided, but such reports and drawings are not Contract Documents. 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. the Contractor’s interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.
- 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 any Hazardous Environmental Conditions created by or as a result of, any materials or substances brought to the Site by the Contractor, Subcontractors, Suppliers, or any of the Contractor’s, Subcontractor’s, Materialmen, Supplier’s employees, guests, invitees, and/or anyone else for whom the Contractor may be held legally liable.
- 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 herein); 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 this Agreement.
- 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 as provided in Paragraph 10.05.

- F. If after receipt of such written notice, the 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 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, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each, 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 the Contractor may be held legally liable. Nothing in this Paragraph shall obligate Contractor to indemnify the Owner or the Engineer from consequences caused by the sole negligence of the party to be indemnified.

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, 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 state of Florida to issue bonds or insurance policies for the limits and coverages so required.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee, 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. 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.
- C. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- D. 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*

The Contractor shall purchase and maintain insurance during the full term of the Contract with the following minimum coverages and liability limits for the Work being performed:

Comprehensive General Liability Insurance:

- 1. Bodily Injury Liability: \$1,000,000.00 per claim/occurrence
- 2. Property Damage Liability: \$250,000.00

Contractual Liability Insurance:

- 1. Bodily Injury Liability: 1,000,000.00
- 2. Property Damage Liability: \$250,000.00

Worker's Compensation and Employer's Liability Insurance:

1. Worker's Compensation: Florida statutory minimum.
2. Employer's Liability: Bodily Injury \$1,000,000.00

Motor Vehicle Liability:

1. Bodily Injury Liability: \$1,000,000.00

A. The required coverages shall provide protection from the claims set forth below and 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:
 - 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.

The policies of insurance required by this Paragraph 5.04 shall:

7. 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 named insureds (subject to any customary exclusion regarding professional liability) the Owner and Engineer, all of whom shall be listed as additional named 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 named insureds shall provide primary coverage for all claims covered thereby;

8. include contractual liability insurance covering all of the Contractor's indemnity obligations under this Agreement;
9. 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 to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor will so provide);
10. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work; and
11. 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 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.

5.05 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased by the Contractor in accordance with the requirements of this Agreement, will protect Owner, Contractor, Subcontractors, and Engineer, and all 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. The Contractor waives all rights against the Owner and its officers, directors, members, partners, employees, agents, consultants and subcontractors of for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by any policy of the Owner or Owner's property insurance applicable to the Work; and, in addition, waives all such rights against Subcontractors and Engineer, and all other 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.

5.06 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.05 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 5.06.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.

- 5.07 Certificates in duplicate from the insurance carrier stating the limits of liability and expiration date shall be filed with Owner before operations are begun. Such certificates shall not merely name the types of policy provided but shall specifically refer to this Contract and shall contain a separate express statement of compliance with each of the requirements as set forth in this Article. The certificates shall, in addition to the information relative to the insurance required, contain the following:

- Inception and expiration dates of insurance policy.
- Limits of liability provided (Public Liability and Property Damage).
- Coverage provided, including special hazards if required.
- Name of insurance company.
- Policy number.
- Additional interests covered.
- Statement that the Explosion, Collapse, and Underground exclusions do not apply.
- Certificate shall reflect self-insured retention applicable to any contract of insurance.
- Excess liability certified contracts must state underlying insurance requirements.
- Project number and nature of work.

No certificate will be accepted which exculpates the issuer or reduces any rights conferred on the Owner by the above certificates, nor will they be accepted unless the certificates bear a live signature of a direct representative of a company authorized to do business in Florida. No certificate will be accepted unless the person signing the certificate certifies, in a separate letter, his/her exact relationship with the insurance carrier or carriers indicated in the certificate. The Owner may, at its sole discretion, modify or waive any of the foregoing requirements. No contract of insurance containing a "claims made" insuring agreement will be acceptable unless the Contractor offering such insurance to fulfill the requirements of this Contract agrees that each such contract of insurance shall be renewed for the entire existence of the Contractor, their successors or assigns; and that on termination of such coverage which is not replaced by a similar contract with the required limits of liability, a "tail policy" will be purchased with limits not less than those required by this Contract.

- 5.08 Acceptance of Bonds and Insurance; Option to Replace

If the Owner has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the Contractor in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the Owner shall so notify the Contractor in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. The Contractor shall each provide the Owner with such additional information in respect of insurance provided as the Owner may reasonably request. If the Contractor does not purchase or maintain all of the bonds and insurance required by the Contract Documents, the Owner shall notify the Contractor 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 Owner may elect to obtain equivalent bonds or insurance at the expense of the Contractor, and a Change Order shall be issued to adjust the Contract Price accordingly.

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 is fluent English, and who shall not be replaced without advance written notice to Owner and Engineer and only 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.
- 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 express and implied warranties, 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 manufacturer and/or 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 unless 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, 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;
 - 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, 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. 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 the equivalent or better functions and achieve the equivalent or better results called for by the general design and provide the same express and implied warranties as the required item,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use and/or particular purpose 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
 - 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. 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), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be 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. Prior to subletting work in excess of five percent (5%) of the Contractor's total Bid, the Contractor shall provide the name, address, and license number(s) of the subcontractor who will perform work or provide services to the Contractor. All subcontractors will be required to obtain an occupational license from the Owner. Contractor shall identify all subcontractors and suppliers and others individually responsible for more than five percent (5%) of the total work. No more than forty percent (40%) of the dollar value of the total contract work may be accomplished by subcontractors. The balance of the work must be accomplished by selected Contractor's own forces. Within five (5) days after the notice of award, Contractor shall submit to the Owner a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for which such identification is required on the form List of Subcontractors provided by the Owner. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, person or organization if requested by the Owner. The Owner or Engineer, who after due investigation has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, may before the Notice of Award is given request apparent Successful Bidder to submit an acceptable substitute, without an increase in Bid price. If the Contractor declines to make any such substitution, the Owner may award the contract to another bidder/contractor that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. Declining to make requested substitutions will not constitute grounds for the release of the Bid security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom the Owner or Engineer does not make written objection prior to giving of the Notice of Award will be deemed acceptable to the Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement.
- B. The 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.
- B. 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.
- C. 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.
- D. 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.
- E. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate written 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, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other 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. The Owner may require the Contractor to provide the Owner with copies of all executed contracts between the Contractor and any Subcontractor, Supplier, or other person or entity who is performing any portion of the Work.

- F. The Contractor shall designate, in writing to the Engineer, a superintendent and any necessary assistants satisfactory to the Engineer to receive the Owner and Engineer's instructions. The Superintendent(s) shall not be changed except with the consent of the Engineer, unless the Superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The Superintendent(s) shall follow without delay all instructions of the Owner or the Engineer or their Resident Project Representative in the prosecution and completion of the work and every part thereof. A Superintendent must be on the site at all times during project construction or otherwise make himself available to the Engineer.
- G. The Engineer may direct work change initiatives and or change orders, but the presence of the Engineer shall not relieve the Contractor of responsibility for the proper execution of the work in accordance with the specifications. The Engineer shall have unlimited access to the project, equipment and materials. The Contractor will be required to furnish, at the request of the Engineer suitable transportation from the shore, to and from any and all attendant equipment. Should the Contractor refuse, neglect, or delay compliance with these requirements, the specific facilities may be furnished and maintained by the Engineer and the cost thereof will be deducted from any amounts due or to become due the Contractor.

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, 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 and utilities*

- A. Contractor shall obtain and pay for all construction permits and licenses. A Department of Environmental Protection (DEP) permit, No. 50-00140569-005 accompanies the Technical Specifications. The DEP permit constitutes both state and federal review and authorization under the SPGP program. Any other permits and licenses required for the prosecution of the Work shall be secured and paid for by the Contractor, specifically and without limitations. The Contractor shall obtain any and all certifications and/or approvals required by DEP and the U.S.

Coast Guard regarding tug and barge and related equipment. Contractor shall be responsible for strict compliance with all permits.

- B. Owner shall reasonably 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. In the event water is made available by the Owner, the Contractor shall take all necessary steps to ensure that such water is properly capped to prevent leaks and waste as determined by the Engineer. Before final acceptance, temporary connections and piping installed by the Contractor shall be removed in a manner satisfactory to the Engineer. All electric current required by the Contractor shall be furnished at his own expense. In the event electricity is made available by the Owner the Contractor shall, at his own expense, install a meter to determine the amount of current used by him and such electricity will be paid for by, or charged to, the Contractor at prevailing rates or at reasonable rates as determined by the Engineer. All temporary lines will be furnished, installed, connected, and maintained by the Contractor in a workmanlike manner satisfactory to the Engineer. All telephone services required by the Contractor shall be furnished at his own expense. All temporary lines will be furnished, installed, connected, and maintained by the Contractor in a workmanlike manner satisfactory to the Engineer.

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 this Agreement³.
- 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 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 state of Florida, 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:*

- B. 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. Where erecting pipe, drainage structures or other structures in, adjacent to, or over, navigable waters, the Contractor shall observe all regulations and instructions of Federal and other authorities having control over such waters. The Contractor shall not obstruct navigation channels without permission from the proper authority, and provide and maintain navigation lights and signals in accordance with the Federal requirements for the protection of the structure, of false work, and of navigation. In the event of accidental blocking of the navigation channel, the Contractor shall immediately notify the U.S. Coast Guard of the blockage and upon removal of the blockage. When work platforms are indicated in the permit for construction, the Contractor must submit work platform construction plans to the appropriate Coast Guard District for approval. Contractor must obtain approval prior to beginning construction on the platform. If the Work includes the excavation of a channel or other underwater areas to a required section, the Contractor shall maintain the section from shoaling or other encroachment until final acceptance of the Work.

1. 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.
2. 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 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.

- C. *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.

- D. *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.
- E. *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 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. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Contractor must comply with all federal, state, and local laws, rules and regulations pertaining to construction safety and health standards. The Contractor agrees not to require any worker to work in surroundings or under conditions, which are unsanitary, hazardous, or dangerous to his health or safety. The Contractor shall remove all debris from the project area prior to final completion in order to prevent injuries.

- C. The 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.
- D. All damage, injury, or loss to any property 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).
- E. 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 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 who is fluent in English and 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

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). The Contractor shall schedule the submission of shop drawings to allow for a 30-day review period. The review period commences upon the Engineer's receipt of the valid submittal or resubmittal and terminates upon the transmittal of the submittal back to the Contractor. A valid submittal includes all the minimum requirements outlined in above. The Contractor shall allow for a 20-day review time for resubmittals.

B. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements. The Contractor shall furnish at least two clearly legible photographic or xerographic copies of all shop drawings that are necessary to complete the structure in compliance with the design shown on the plans. The Contractor shall prepare all shop drawings using the same units of measure as those used in the Owner's plans. The Contractor shall use sheets no larger than 24 by 36 inches [610 by 915 mm]. Consecutively number each sheet in the submittal series, and indicate the total number in the series (i.e., 1 of 12, 2 of 12, 12 of 12). The Contractor shall include on each sheet the following items as a minimum requirement: the Owner's Contract Number, drawing title and number, a title block showing the names of the fabricator or producer and the Contractor for which the work is being done, the initials of the person(s) responsible for the drawing, the date on which the drawing was prepared, the location of the item(s) within the project, the Contractor's approval stamp with date and initials, and, when applicable, the signature and embossed seal of the Specialty Engineer. A re-submittal will be requested when any of the required information is not included.
- 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.
- C. 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.

D. *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.
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.

E. *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 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.

F. *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 herein or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor unconditionally 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 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 or Owner's agents.

6.20 *Indemnification*

- A. Pursuant to Section 725.06, Fla. Stat., the specific consideration for the indemnification provided by the Contractor is the sum of \$10.00 paid by the Owner to the Contractor as an additional consideration. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, defend, and hold harmless, the Owner and Engineer, and their respective 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, the performance of the Work, including but not limited to, property damage and the loss of use resulting therefrom, by any negligent act or omission of the Contractor, and/or the Contractor's agents, employees, invitees, guests, contractors, Subcontractors, Suppliers, and/or any other individual or entity who performs any of the Work and/or any other person or entity for whose acts any of them may be liable. The Contractor shall indemnify, defend, and save harmless the Owner, its agents, or employees from and against all claims, demands, actions, suits, damages losses, expenses, costs, including attorney's fees, and judgments of every kind and description arising from, based upon, or growing out of the violation of any Federal, State, county or city law, by-law, ordinance of regulation by the Contractor, its agents, trainees, invitees, servants or employees. The Contractor further acknowledges that it is solely responsible for ensuring the safety of the premises to protect its employees, subcontractors, invitees, licensees and all other persons during the course of the work, and agrees to hold and save the Owner harmless against all claims involving alleged negligence by the Owner in failing to adequately ensure the safety of the site or otherwise ensure compliance with the Contract. The Contractor shall indemnify, defend, save and hold harmless the Owner, its officers, agents, and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property, or other work in connection with the performance of the Contract. The Contractor shall pay all losses, claims, liens, settlements, or judgments of any nature whatsoever in connection with the foregoing indemnification, including but not limited to, reasonable attorney's fees (including appellate attorneys' fees and costs). The Owner reserves the right to select its own counsel to conduct any defense in any such proceedings and all costs and fees associated therewith shall be the responsibility of the Contractor under the indemnification agreement set forth herein. Nothing contained herein is intended nor shall it be construed to waive Owner's rights and immunities under the common law or Florida Statute 768.28, as amended from time to time.
- 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 obligations of this Agreement 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 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. 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.

- 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 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. 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 payment(s) to Contractor when due as provided herein.

8.05 *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..

8.06 *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.

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 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. 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 is provided in Paragraph 9.09. The Resident Project Representative employed by the Engineer shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. A Resident Project Representative is not authorized to revoke, alter, or waive any provision of the Contract. The Resident Project Representative is not authorized to issue instructions contrary to the Drawings and Specifications or to act as foreman for the Contractor.

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 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, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples.
- 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.
- C. In connection with Engineer's authority as to Change Orders.
- D. In connection with Engineer's authority as to Applications for Payment.

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 for the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to Engineer in writing.
- 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 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 9.08 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.

- 9.11 Notwithstanding anything in the Contract Documents to the contrary, Engineer shall always be the representative of the Owner with the duty of professional loyalty solely to the Owner. In all matters, the Engineer will represent the interests of the Owner within the bounds of Engineer's professional responsibility and ethical constraints, and will have no duty of impartiality to the Contractor. This provision shall take priority over any other provision of the Contract Documents affecting the role of the Engineer, Owner, and Contractor.

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 as provided in Paragraph 10.05.

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 or Owner's correction of defective Work, 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.

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 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:

(a) 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. The Contractor will receive payment for actual costs of direct labor and burden for the additional or unforeseen work. Labor includes foremen actually engaged in the work; and will not include project supervisory personnel nor necessary on-site clerical staff, except when the additional or unforeseen work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. Compensation for project supervisory personnel, but in no case higher than a Project Manager's position, shall only be for the pro-rata time such supervisory personnel spent on the contract. In no case shall an officer or director of the Company, nor those persons who own more than 1% of the Company, be considered as project supervisory personnel, direct labor or foremen hereunder. 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. At the Pre-construction conference, the Contractor shall certify to the Engineer the following:

- A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the contract
- Actual Rate for items listed above
- Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and;

- Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

Such certification must be made by an officer or director of the Contractor with authority to bind the Contractor. Timely certification is a condition precedent to any right of the Contractor to recover compensations for such costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such costs. Any subsequent changes shall be certified to the Engineer as part of the cost proposal or seven calendar days in advance of performing such extra work.

(b) 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. For materials accepted by the Engineer and used on the project, the Contractor will receive the actual cost of such materials incorporated into the work, including Contractor paid transportation charges (exclusive of equipment as hereinafter set forth). For supplies reasonably needed for performing the work, the Contractor will receive the actual cost of such supplies. 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.

(c) 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.

1. Supplemental costs including the following:

- (b) Costs, 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 costs, less market value, of such items used but not consumed which remain the property of Contractor.
- (c) For any machinery or special equipment (other than small tools), including fuel and lubricant, the Contractor will receive 50% of the "Rental Rate Blue Book" for the actual time that such equipment is in operation on the work, and 25% of the "Rental Rate Blue Book" for the time the equipment is directed to standby and remain on the project site, to be calculated as indicated below. The equipment rates will be based on the latest edition (as of the date the work to be performed begins) of the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable, as published by Machinery

information Division of PRIMEDIA Information, Inc. (version current at the time of Bid), using all instructions and adjustments contained therein and as modified below. On all projects, the Engineer will adjust the rates using regional adjustments and Rate Adjustment Tables according to the instructions in the Blue Book.

Allowable Equipment Rates will be established as set out below:

- (1) Allowable Hourly Equipment Rate = Monthly Rate/176 x Adjustment Factors x 50%
- (2) Allowable Hourly Operating Cost = Hourly Operating Cost x 100%.
- (3) Allowable Rate Per Hour = Allowable Hourly Equipment Rate + Allowable Hourly Operating Cost
- (4) Standby Rate = Allowable Hourly Equipment Rate x 50%.

The Monthly Rate is The Basic Machine Rate Plus Any Attachments. Standby rates will apply when equipment is not in operation and is directed by the Engineer to standby at the project site when needed again to complete work and the cost of moving the equipment will exceed the accumulated standby cost. Standby rates will not apply on any day the equipment operates for eight or more hours. Standby payment will be limited to only that number of hours which, when added to the operating time for that day equals eight hours. Standby payment will not be made on days that are not normally considered work days on the project. The Owner will allow for the cost of transporting the equipment to and from the location at which it will be used. If the equipment requires assembly or disassembly for transport, the Owner will pay for the time to perform this work at the rate for standby equipment. Equipment may include vehicles utilized only by Labor, as defined above.

- a. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- b. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain. The Contractor will receive compensation for any premium for acquiring a bond for such additional or unforeseen work; provided, however, that such payment for additional bond will only be paid upon presentment to the Owner of clear and convincing proof that the Contractor has actually provided and paid for separate bond premiums for such additional or unforeseen work in such amount.

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, expeditors, 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 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 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; 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, plus a Contractor's fee for overhead and profit.
- 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 Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor 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. The parties anticipate that delays may be caused by or arise from any number of events during the term of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the Engineer, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, special events, suspension of Contract time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.
- B. After giving the Engineer notice of intent to file a claim for extra work or delay, the Contractor must keep daily records of all labor, material and equipment costs incurred for operations affected by the extra work or delay. These daily records must identify each operation affected by the extra work or delay and the specific locations where work is affected by the extra work or delay, as nearly as possible. The Engineer may also keep records of all labor, material and equipment used on the operations affected by the extra work or delay. The Contractor shall, once a notice of intent to claim has been timely filed, and not less than weekly thereafter as long as appropriate, provide the Engineer a copy of the Contractor's daily records and be likewise entitled to receive a copy of the Owner's daily records. The copies of daily records to be provided hereunder shall be provided at no cost to the recipient. When submitting any claim, the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what the Contractor in good faith believes to be the Owner's liability. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.

- C. If the 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 may 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 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.
- D. If the Owner, Engineer, or other contractors or utility owners performing other work for Owner, 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. For any delay claim, the Contractor shall only be entitled to monetary compensation for the actual idle labor, equipment and materials costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken, nor shall any indirect costs be recoverable for any delay. No jobsite overhead and other indirect impacts of delay shall be compensable under any circumstances whatsoever, nor shall the Contractor be entitled under any circumstances to receive compensation for jobsite overhead and other indirect impacts of delay. Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Owner and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Owner but shall have no right to nor receive any monetary compensation for any indirect impacts for any days of concurrent delay. No compensation, whatsoever, will be paid to the Contractor for any jobsite overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Owner is, or the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Owner is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Owner, that when cumulatively totaled together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, days used for performing additional work, days included in supplemental agreements, and days of suspended work.
- E. 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 may 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.

- F. 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. The parties agree that for any claim the Owner will not have liability for the following items of damages or expense:
1. loss of profit, incentives or bonuses;
 2. any claim for other than extra work or delay;
 3. consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;
 4. acceleration costs and expenses, except where the Owner has expressly and specifically directed the Contractor in writing "to accelerate at the Owner's expense"; nor
 5. attorney's fees, claims preparation expenses and costs of litigation.
- G. 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.
- H. The Owner shall have no liability for any constructive acceleration of the work, nor shall the Contractor have any right to make any claim for constructive acceleration or include the same as an element of any claim the Contractor may otherwise submit under this Contract. If the Engineer gives express written direction for the Contractor to accelerate its efforts, such written direction will set forth the prices and other pertinent information and will be reduced to a written Contract Document promptly. No payment will be made on a Supplemental Agreement for acceleration prior to the Owner's approval of the documents.
- I. All claims filed against the Owner shall be subject to audit at any time following the filing of the claim, whether or not such claim is part of a suit pending in the courts of this State. The audit may be performed, at the Owner's sole discretion, by employees of the Owner or by any independent auditor appointed by the Owner, or both. The audit may begin after ten days written notice to the Contractor, Subcontractor, or Supplier. The Contractor, subcontractor, or supplier shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any claim, the Contractor, Subcontractor, or Supplier must retain sufficient records, and provide full and reasonable access to such records, to allow the Owner's auditors to verify the claim and failure to retain sufficient records of the claim or failure to provide full and reasonable access to such records shall constitute a waiver of that portion of such claim that cannot be verified and shall bar recovery there under. Further, and in addition to such audit access, upon the Contractor submitting a written claim, the Owner shall have the right to request and receive, and the Contractor shall have the affirmative obligation to provide to the Owner, copies of any and all documents in the possession of the Contractor or its subcontractors, materialmen or suppliers as may be deemed relevant by the Owner in its review of the basis, validity or value of the Contractor's claim. Without limiting the generality of the foregoing, the Contractor shall upon

written request of the Owner make available to the Owner's auditors, or upon the Owner's written request for copies provide copies at the Owner's expense, any or all of the following documents:

- Daily time sheets and foreman's daily reports and diaries;
 - Insurance, welfare and benefits records;
 - Payroll register;
 - Earnings records;
 - Payroll tax return;
 - Material invoices, purchase orders, and all material and supply acquisition contracts;
 - Material cost distribution worksheet;
 - Equipment records (list of company owned, rented or other equipment used);
 - Vendor rental agreements and subcontractor invoices;
 - Subcontractor payment certificates;
 - Canceled checks for the project, including, payroll and vendors;
 - Job cost report;
 - Job payroll ledger;
 - General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;
 - Cash disbursements journal;
 - Financial statements for all years reflecting the operations on this project;
 - Income tax returns for all years reflecting the operations on this project;
 - All documents which reflect the Contractor's actual profit and overhead during the years this Contract was being performed and for each of the five years prior to the commencement of this Contract;
 - All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based;
 - All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim;
 - Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents that establish which time periods and individuals were involved, and the hours and rates for such individuals.
- J. If the Work is not completed within the time provided for Substantial Completion (final completion), Owner may permit the Work to proceed, but in so doing shall not be deemed to have waived any rights it may have because of time being of the essence. In any event, and whether or not time of the essence has been waived, if the time for completion has expired, Owner may unilaterally fix a new date for final completion by written notice of not less than five (5) calendar days.

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.

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. The Contractor shall furnish the Engineer with every reasonable facility for ascertaining whether the work performed and materials used are in accordance with the requirements and intent of the Contract Documents. If, during or prior to construction operations, the Engineer fails to reject defective work or materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject in no way prevents the later rejection when such defect is discovered, or obligates the Owner to final acceptance. The Owner is not responsible for losses suffered due to any necessary removals or repairs of such defects.
- 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.
- 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 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 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 is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 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 If the Contractor fails or refuses to promptly comply with the Owner's instructions, or fails or refuses to remove and correct any defective materials used or Work performed, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of the Contract within the time indicated in writing, the Engineer has the authority to repair, remove, or correct the unacceptable or defective materials or Work as necessary, all at the Contractor's expense. The Owner will obtain payment for all expenses incurred (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 the removal and replacement (including but not limited to all costs of repair or replacement of work of others), by deducting the expenses from any moneys due or which may become due the Contractor, or by charging such amounts against the Contract bond.

- 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, 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 as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

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 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 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. There will be one progress payment and one final payment for the Contract. The progress payment will be made after completion of mobilization and installation of a minimum of 120 linear feet of seawall in accordance with the Construction Drawings and Technical Specifications, in such amount as is approved by the Engineer, not to exceed twenty-five percent (40%) of the Contract Price. Final payment will be made in accordance with Article 14. Completion of mobilization, for purposes of the progress payment, shall require that the Contractor have all needed equipment and supplies on site and in operation to the extent of successfully installing 120 linear feet of seawall to the satisfaction of the Engineer. The Owner shall have the right to hold retainage as security for payment by Contractor to Owner of any sum for which Contractor may be liable to indemnify Owner, arising out of any violation of any applicable permit or any damage or other claim arising from Contractor's performance of the Work. The amount of such retainage shall be such amount as Owner determines to be appropriate security for such indemnity, up to 10% of the Contract Price, or the total potential fines, which may be imposed by any and all agencies for any permit violations. Such retainage shall be held by Owner, without interest, until all indemnities have been paid, or Owner is otherwise reasonably assured that no further claims will be made for which Contractor would be obligated to indemnify Owner under this Agreement. 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 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.

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.
4. Liquidated damages. Failure to complete the Project within the time fixed in this Contract will result in substantial injury to the Owner. As damages arising from such failure cannot be calculated with any degree of certainty, it is hereby agreed that if the Work is not completed with the time fixed or within such further time, if any, as may be authorized in accordance with the Contract documents, the Contractor shall pay to the Owner as Liquidated Damages for such delay, and not as a penalty, \$ _____ (_____ dollars), for each and every calendar day elapsing between the date fixed for completion and the date such completion shall have actually occurred. This provision of Liquidated Damages for delay shall in no manner affect the Owner's right to terminate the Contract. The Owner's exercise of the right to terminate shall not release the Contractor from his obligation to pay Liquidated Damages. It is further

agreed that the Owner may deduct from the balance of the Contract sum held by the Owner the Liquidated Damages stipulated herein or such portions as said balance will cover.

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 schedule and conduct an inspection of the Work to determine the status of completion. The purpose of this inspection will be to develop a final list of incomplete or deficient work, and the necessary completion of which will render complete, satisfactory, and acceptable the construction services purchased by the Owner. The Contractor's Project Manager shall schedule the attendance of any required representatives of Subcontractors and/or Suppliers providing materials and services for the Work. 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 ("punch list") to be completed or corrected before final payment. This list of incomplete or deficient work is herein after referred to as "punch list work.". The determination by the Engineer as to the items identified in the punch list shall be conclusive and shall not subject to challenge by the Contractor in any forum, except upon the Contractor establishing by clear and convincing proof that the determination by the Engineer was without any reasonable and good faith basis. The failure of the Engineer, to include any corrective work or pending items not yet completed on the punch list does not alter the responsibility of the Contractor to complete all of the construction services pursuant to the Contract. All items that require correction under the Contract and that are identified after the preparation of the punch list remain the obligation of the Contractor as defined by the Contract. For construction projects having an estimated cost of less than \$10 million, the punch list will be completed by the Contractor within 30 calendar days of substantial completion. For construction projects having an estimated cost of \$10 million or more, the punch list will be completed by the Contractor within 30 calendar days of substantial completion, unless extended by the Contract not to exceed 60 calendar days. In the event the Contractor's Project Manager or any required representatives of Subcontractor or Suppliers fail to attend the scheduled punch list inspection, the Engineer will continue the scheduled inspection and develop the punch list. The Contractor will be provided a copy of the punch list at the address provided for written notice.

- D. 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 the punch 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. 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 punch 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.
- E. 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.
- F. 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.

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.
- B. Final Payment
- C. *Application for Payment:*
 - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all punch list corrections and 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 herein;
 - 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 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.

D. *Engineer's Review of Application and Acceptance:*

E. 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 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. The final acceptance date will be the date that which warranty provisions and the time limitations for latent defects commence. 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.

F. *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.

14.07 *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.

14.08 *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, 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.

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. If the Contractor persistently fails 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, as adjusted from time to time, and the Contractor's failure to prosecute the Work at a rate which, in the discretion of Engineer, would not result in completion of the Work within the time allowed for Substantial Completion);
 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 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 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. agrees with the other party to submit the Claim to another dispute resolution process; or

2. 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. The Contractor shall provide Owner and Engineer with a telephone number by which the supervisor of Contractor's work crew can be contacted at any time, 24 hours a day. In addition, written notice may be given at the election of the giver, by fax, at the fax numbers shown below, followed by regular mail or delivery.

OWNER fax: (561) 881-3304

ENGINEER fax: (561) 748-6745

CONTRACTOR phone: _____

CONTRACTOR fax: _____

- B. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
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 laws of the state of Florida.

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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TECHNICAL SPECIFICATIONS

1.0 SITE PREPARATION

1.1 SCOPE:

- A. Work includes clearing, removal of constructed items, removal of trees and plants, and vegetation stripping as indicated on Drawings and specified herein.
- B. Backfilling and compaction of sub-surface voids created by removal of constructed items, trees and plants is specified under Earthwork.
- C. Tree and plant protection shall be performed wherever possible.

1.2 EXISTING SURFACE AND SUB-SURFACE CONDITIONS:

- A. Drawings do not indicate known above and underground utilities and/or construction elements at locations where it is anticipated that they may interfere with construction of this project. Location of underground utilities must be provided by the utility companies or a qualified contractor. The ENGINEER and the Town of Lake Park will assume no responsibility for damage to utilities.
- B. The CONTRACTOR shall contact all potential utilities and location services prior to excavation to ensure that no damage or impact to existing utilities is incurred.

1.3 BENCH MARKS AND MONUMENTS:

- A. Maintain carefully all bench marks, monuments and other reference points; if disturbed or destroyed, replace as directed.

1.4 DISPOSAL:

- A. Items to be removed or cleared shall be removed from project site, and disposed of at a COUNTY approved dump site. Location of dump and length of haul shall be responsibility of CONTRACTOR. On-site burying of removed or cleared items shall be prohibited.

1.5 REMOVAL OF CONSTRUCTED ITEMS:

- A. Remove and dispose of all constructed items as may be indicated on Drawings.

1.6 CLEAN-UP:

- A. As work is completed, CONTRACTOR shall immediately remove and dispose of all cleared materials and shall leave all driveways, sidewalks, and other areas free, clear and in good order wherever possible.

1.7 TREE AND PLANT PROTECTION:

- A. Provide protection for all existing trees and plants which Drawings do not indicate to be removed. Protect all trees and shrubs from damage which are on adjoining property.

1.8 PROTECTION REQUIREMENTS:

- A. Interfering branches shall be removed to a distance of 3' from horizontal and vertical construction surfaces, unless otherwise approved by the ENGINEER, except that such removal shall not be on property other than the construction site.

- 1) Branches shall be undercut prior to making the severing top cut.

- 2) Branches which have been cut shall have ends treated with black pruning paint on day of cut.

- B. Interfering tree roots of 1" diameter or larger shall be cut back 12" from face of embankments, anchor blocks, walls, footings, and other construction items which are to be placed below grade.

- 1) Root ends shall be painted with black pruning paint and enclosed in roofing felt for 6". Roofing felt shall be securely wired to root.

- C. New minor scars shall be treated with black pruning paint on day of damage.

1.9 RESPONSIBILITY:

- A. It shall be the responsibility of the CONTRACTOR to provide the physical and/or management measures required to protect trees and plants from damage.

- B. Damaged trees and/or plants shall be repaired or replaced at CONTRACTOR's expense.

2.0 EARTHWORK

2.1 SCOPE:

- A. Work includes excavation, backfill, compaction, grading and related work as indicated on Drawings and specified herein.

- B. Clearing and disposal is specified in Site Preparation.

- C. Tree and plant protection is specified in Site Preparation.

- 2.2 EXISTING CONDITIONS:
- A. Drawings indicate known underground utilities and/or construction elements at locations where it is anticipated that they may interfere with construction of this project. The CONTRACTOR is to verify location of utilities before excavation is to commence.
- 2.3 BENCH MARKS AND MONUMENTS:
- A. Maintain carefully all bench marks, monuments and other reference points. If disturbed or destroyed, replace as directed.
- 2.4 SURVEY:
- A. Horizontal control and spot elevation checks by an independent surveyor may be made as directed by the ENGINEER to determine conformance with the Contract Documents.
- B. Initial survey checks shall be paid for by the OWNER. Any rechecking required due to non-conformance shall be paid for by the CONTRACTOR.
- 2.5 DENSITY TESTS:
- A. Field density control tests shall be made as directed by the ENGINEER to determine conformance with these specifications. Tests shall be performed by a qualified testing laboratory and shall be the Town's responsibility to obtain and pay the costs.
- 2.6 FILL MATERIAL:
- A. Fill material shall be consistent with site material. The CONTRACTOR shall provide a sample of the fill material to the ENGINEER for approval prior to placement of the material.
- 2.7 DISPOSAL:
- A. Construction material waste, debris, organic material and unsuitable fill material excavated from required on-site excavations shall be removed from the site. Location of dumps, and length of haul shall be the responsibility of CONTRACTOR. Disposal to be in COUNTY approved dump site.
- 2.8 CONTROL OF WATER:
- A. At all times during work until completion and final acceptance, ample means and equipment shall be provided with which to remove promptly, and dispose of properly, all standing water that would interfere with the Work.

- B. Water pumped or drained from the Work shall be disposed of in a suitable manner without damage to adjacent property. Water shall not be discharged onto streets.
- C. Any and all water damage shall be promptly repaired by CONTRACTOR at his expense.

2.9 SHORING AND SHEETING:

- A. Excavations shall be shored, sheeted and braced as necessary to accomplish the work in a safe, efficient manner and/or to protect existing construction. Construction of shoring shall be in accordance with all applicable federal, state, and local regulatory agency requirements.

CONTRACTOR shall be responsible for all damage to persons or property resulting from the omission of necessary shoring, sheeting and bracing.

- B. Sheeting and bracing shall be removed as the excavation is refilled in such a manner as to avoid caving in the bank or disturbance to adjacent areas or structures. The voids left by removal of the sheeting shall be carefully filled by ramming or as otherwise approved by ENGINEER.

2.10 EXCAVATIONS:

- A. Excavations shall be true to line and grade as indicated on the Drawings and shall conform to the following:
 - 1) Excavation shall include removal of all materials of every description as required to accomplish the Work.
 - 2) CONTRACTOR shall control grading around excavations so that the ground is pitched to prevent water from running into excavated area.

2.11 FILLING AND BACKFILLING:

- A. All filling and backfilling shall conform to the following, except as specified otherwise.
 - 1) Remove all debris from area prior to filling or backfilling.
 - 2) Fill and backfill shall be deposited in layers (lifts) of not more than 12". Each lift shall be compacted using equipment and methodologies as approved by ENGINEER.

2.12 COMPACTION:

- A. Compaction shall be performed in a manner such that new and existing walls, footings, and other structures are undisturbed and undamaged.
- B. Compaction specified hereinafter shall be a minimum 98% of the maximum dry density as indicated by the modified Proctor Compaction Test (ASTM 1557) or ASSHO T-180 or 98% of the Standard Proctor Test, or as accepted by the engineer.
- C. The CONTRACTOR shall supply test results to the ENGINEER upon completion of work. Compaction tests shall be done on the backfill of all tie-back anchors, or as directed by the ENGINEER. The Town will pay for Density Tests.

2.13 GRADING:

- A. Perform all compaction, rough and finish grading required to obtain grades indicated on Drawings as follows:
 - 1) Surfaces shall be true to lines and grades indicated on Drawings.
 - 2) Grades not otherwise indicated shall be uniform slopes between points and/or existing grades.
 - 3) Tolerance for any specific grade shown on Drawings shall be plus or minus one-tenth of one foot, but the average elevation for the area shall be as specified.
 - 4) Finish surfaces shall be uniformly graded with rounded transitions and be free of holes, ridges and other irregularities.

2.14 EROSION CONTROL:

- A. CONTRACTOR shall be responsible for erosion control during the progress of the work and shall leave the site in good order, free from effects of erosion at final completion of all work.

3.0 CONCRETE WORK

3.1 SCOPE:

- A. The work consists of furnishing materials, labor and equipment to construct the seawall panels, cap and anchor blocks, including reinforcement, and embed items.

3.2 RELATED DOCUMENTS:

- A. Drawings, general notes, and Florida Dept. of Transportation Specifications for Road and Bridge Construction, current edition.

3.3 QUALITY ASSURANCE:

- A. Comply with provisions of following codes, specifications and standards, except where more stringent requirements are shown or specified:
 - 1) ACI 301 "Specifications for Structural Concrete for Buildings".
 - 2) ACI 318 "Building Code Requirements for Reinforced Concrete."
 - 3) Concrete Reinforcing Steel Institute, (CRSI) "Manual of Standard Practice".
 - 4) FDOT Specifications for Road and Bridge Construction.
 - 5) Where there are differences in codes, the more stringent will apply.

3.4 MATERIALS:

A. FORM MATERIALS:

- 1) Forms for Exposed Finish Concrete: Plywood, metal, metal-framed plywood faced, or other acceptable panel-type materials, to provide continuous, straight, smooth, exposed surfaces. Furnish in largest practicable sizes to minimize number of joints and to conform to joint system shown on Drawings.

Use overlaid plywood complying with U.S. Product Standard PS-1 "A-C or B-B High Density Overlaid Concrete Form: Class I.

- 2) Forms for Unexposed Finish Concrete: Plywood, lumber, metal, or other acceptable material. Provide lumber dressed on at least 2 edges and one side for tight fit.
- 3) Form Coatings: Provide commercial formulation form-coating compounds that will not bond with, stain nor adversely affect concrete surfaces, and will not impair subsequent treatments of concrete surfaces.

B. REINFORCING MATERIALS:

- 1) Reinforcing Bars: ASTM A 615, Grade 60, deformed.

- 2) Supports for Reinforcement: Bolsters, chairs, spacers, and other devices for spacing, supporting, and fastening reinforcing bars in place. Use wire bar type supports complying with CRSI specifications.

C. CONCRETE MATERIALS:

- 1) All concrete to be FDOT Class IV, f_c 5000 psi. Concrete for wall cap to also be in accordance with FDOT Section 346.
- 2) Use one brand of cement throughout project, unless otherwise acceptable to the ENGINEER.
- 3) Fly-Ash: Permitted.
- 4) Normal Weight Aggregates: ASTM C 33, and as herein specified. Provide aggregates from a single source for exposed concrete.

For exterior exposed surfaces, do not use fine or coarse aggregates containing spalling-causing deleterious substances.

- 5) Local aggregates not complying with ASTM C 33 but which have shown by special test or actual service to produce concrete of adequate strength and durability may be used when accepted by the ENGINEER.
- 6) Water: Drinkable.

D. RELATED MATERIALS:

- 1) Expansion Joint Material: 1/2" nominal thickness, asphalt impregnated.
- 2) Expansion/Constriction Joint Sealant: Low modulus silicone.
- 3) Liquid Membrane-Forming Curing/Sealing Compound: Liquid type membrane-forming curing compound complying with ASTM C 309, Type I, Class A. Moisture loss not more than 0.055 gr./sq. cm. when applied at 200 sq. ft./gal.

Products: Subject to compliance with requirements, provide one of the following:

- Masterseal"; Master Builders.
- "A-H 3 Way Sealer"; Anti-Hydro Waterproofing Co.
- "Encore"; Euclid Chemical Co.
- "Clear Seal"; A.C. Horn

- "Sealco 309"; Gifford-Hill/American Admixtures.
- "J-20 Acrylic Cure"; Dayton Superior
- "Sure Cure"; A.C. Horn
- "Spartan-Cote"; The Burke Co.
- "Sealkure"; Toch Div. - Carboline.
- "Kure-N-Seal"; Sonneborn-Rexnord.
- "Polyclear"; Upco Chemical/USM Corp.
- "L&M Cure"; L&M Construction Chemicals.
- "Klearseal"; Setcon Industries.
- "LR-152"; Protex Industries.
- "Hardtop"; Gifford-Hill.
- ENGINEER approved alternate

E. PROPORTIONING AND DESIGN OF MIXES:

- 1) Design mixes shall be in strict compliance with the FDOT specifications for the product. No deviations are allowed.

- 2) Slump Limits: Proportion and design mixes to result in concrete slump at point of placement as follows:

Not less than 3" and not more than 5".

F. CONCRETE MIXING:

- 1) Ready-Mix Concrete from commercial supplier approved by FDOT. Comply with requirements of FDOT Specifications, and as herein specified.

3.5 EXECUTION:

A. GENERAL:

- 1) Coordinate the installation of joint materials with placement of forms and reinforcing steel.

B. FORMS:

- 1) Design, erect, support, brace and maintain formwork to support vertical and lateral, static, and dynamic loads that might be applied until such loads can be supported by concrete structure. Construct formwork so concrete members and structures are of correct size, shape, alignment, elevation, and position. Maintain formwork construction tolerances complying with ACI 347.

- 2) Fabricate forms for easy removal without hammering or prying against concrete surfaces. Provide crush plates or wrecking plates where stripping may damage cast concrete surfaces.
- 3) Place chamfer strips for exposed corners and edges as indicated.
- 4) Cleaning and Tightening: Thoroughly clean forms and adjacent surfaces to receive concrete. Remove chops, wood sawdust, dirt or other debris just before concrete is placed. Retightening forms and bracing after concrete placement is required to eliminate mortar leaks and maintain proper alignment.

C. PLACING REINFORCEMENT:

- 1) Comply with Concrete Reinforcing Steel Institute's recommended practice for "Placing Reinforcing Bars", for details and methods of reinforcement placement and supports, and as herein specified.
- 2) Clean reinforcement of loose rust and mill scale, earth, and other materials which reduce or destroy bond with concrete.
- 3) Accurately position, support and secure reinforcement against displacement by formwork, construction, or concrete placement operations. Locate and support reinforcing by metal chairs, runners, bolsters, spacers, and hangers, as required.
- 4) Place reinforcement to obtain at least minimum coverage for concrete protection. Arrange space and securely tie bars and bar supports to hold reinforcement in position during concrete placement operations. Set wire ties so ends are directed into concrete, not toward exposed concrete surfaces.
- 5) All reinforcing steel shall be sprayed with a 5% solution of phosphoric acid a maximum of 24 hrs. prior to placement of concrete in forms. CONTRACTOR shall notify ENGINEER when spraying of steel is to be performed.

D. JOINTS:

- 1) Joints in seawall caps shall be as shown on Drawings.

E. INSTALLATION OF EMBEDDED ITEMS:

- 1) General: Set and build into work anchorage devices and other embedded items as indicated on plans and specifications.

F. PREPARATION OF FORM SURFACES:

- 1) Clean re-used forms of concrete matrix residue, repair and patch as required to return forms to acceptable surface condition.
- 2) Coat contact surfaces of forms with a form-coating compound before reinforcement is placed.
- 3) Thin form-coating compounds only with thinning agent of type, amount, and under conditions of form-coating compound manufacturer's directions. Do not allow excess form-coating material to accumulate in forms or to come into contact with in-place concrete surfaces against which fresh concrete will be placed. Apply in compliance with manufacturer's instructions.

G. CONCRETE PLACEMENT:

- 1) Pre-placement Inspection: Before placing concrete, inspect and complete formwork installation, reinforcing steel, and items to be embedded or cast-in. CONTRACTOR shall notify ENGINEER of date of concrete placement. CONTRACTOR shall not place concrete prior to receiving written approval from ENGINEER to do so.
- 2) General: Comply with FDOT Specifications for Road and Bridge Construction, current edition, and CRSI "Manual of Standard Practice".
- 3) Deposit concrete continuously or in layers of such thickness that no concrete will be placed on concrete which has hardened sufficiently to cause the formation of seams or planes of weakness. If a section cannot be placed continuously, provide construction joints as herein specified. Deposit concrete as nearly as practicable to its final location to avoid segregation.
- 4) Placing Concrete in Forms: Deposit concrete in forms in horizontal layer not deeper than 24" and in a manner to avoid inclined construction joints. Where placement consists of several layers, place each layer while preceding layer is still plastic to avoid cold joints.
- 5) Consolidate placed concrete by mechanical vibrating equipment supplemented by hand-spading, prodding or tamping. Use equipment and procedures for

consolidation of concrete in accordance with ACI 309. Concrete shall be thoroughly worked around reinforcement and embed items.

- 6) Do not use vibrators to transport concrete inside forms. Insert and withdraw vibrators vertically at uniformly spaced locations not farther than visible effectiveness of machine. Place vibrators to rapidly penetrate placed layer and at least 6" into preceding layer. Do not insert vibrators into lower layers of concrete that have begun to set. At each insertion limit duration of vibration time necessary to consolidate concrete without causing segregation of mix.
- 7) Consolidate concrete during placing operations so that concrete is thoroughly worked around reinforcement and other embedded items and into corners.
- 8) Maintain reinforcing in proper position during concrete placement operations.

H. CONCRETE CURING AND PROTECTION:

- 1) General: Protect freshly placed concrete from premature drying and excessive cold or hot temperatures.
- 2) Apply specified curing and sealing compound to concrete as soon as final finishing operations are complete (within 2 hours). Apply uniformly in continuous operation by power-spray or roller in accordance with manufacturer's directions. Recoat areas subjected to heavy rainfall within 3 hours after initial application. Maintain continuity of coating and repair damage during curing period.

I. QUALITY CONTROL TESTING DURING CONSTRUCTION:

- 1) Sampling Fresh Concrete: ASTM C 172, except modified for slump to comply with ASTM C94.

Slump: ASTM C 143; one test at point of discharge for each set of cylinders made for each type of concrete; additional test when concrete consistency seems to have changed.

Air Content: ASTM C 173, volumetric method for lightweight or normal weight concrete; ASTM C 231 pressure method for normal weight concrete; one for each day's pour of each type of air-entrained concrete.

Compression Test Specimen: ASTM C 31; one set of 5 standard cylinders for each compressive strength test, unless otherwise directed. Mold and store cylinders for laboratory cured test specimens except when field-cure test specimens are required.

Compressive Strength Tests: ASTM C39; one set for each day's pour for each 50 cu. yds. or fraction thereof of each concrete class placed in any one day; two specimens tested at 7 days, two specimens tested at 28 days, and one specimen retained in reserve for later testing if required.

When frequency of testing will provide less than 5 strength tests for a given class of concrete, conduct testing from at least 5 randomly selected batches or from each batch if fewer than 5 are used.

When total quantity of a given class of concrete is less than 50 cu. yds., strength test may be waived by ENGINEER if, in his judgment, adequate evidence of satisfactory strength is provided.

When strength of field-cured cylinders is less than 85 percent of companion laboratory-cured cylinders, evaluate current operations and provide corrective procedures for protecting and curing the in-place concrete.

Strength level of concrete will be considered satisfactory if averages of sets of three consecutive strength test results equal or exceed specified compressive strength, and no individual strength test result falls below specified compressive strength by more than 500 psi.

- 2) Test Results will be reported in writing to ENGINEER and CONTRACTOR within 24 hours after tests. Reports of compressive strength test shall contain the project identification name and number, date of concrete placement, name of concrete testing service, concrete type and class, location of concrete batch in structure, design compressive strength at 28 days, concrete mix proportions and materials; compressive breaking strength and type of break for both 7-days tests and 28-day tests.

4.0 CONCRETE PILING AND PANELS

4.1 SCOPE:

The Work consists of furnishing all materials, labor, and equipment for the installation of pre-stressed concrete piles and pre-cast concrete panels.

4.2 SITE CONDITIONS:

The site conditions, including vegetation, utilities, and existing improvements, are indicated on the Drawings.

4.3 SUBMITTALS:

A. Pile order lists, details of equipment and methods proposed for handling and driving piles, and the sequence of construction. Driving of piles shall not commence until the ENGINEER'S review of proposed equipment is complete and an authorization to proceed is given.

B. Shop drawings showing the number and size of prestressing strands, prestress force, reinforcing, mark numbers, pick point locations, and all other details necessary for manufacturing and handling the prestressed concrete piles. Casting of piles shall not commence until shop drawings are approved by the ENGINEER.

4.4 QUALITY ASSURANCE:

A. Driving - It is the CONTRACTOR'S responsibility to install in an undamaged condition all the piles to the tip elevations on the drawings or to refusal as defined by the ENGINEER.

B. The CONTRACTOR shall select, subject to the approval of the ENGINEER, the hammer size and cushion type and thickness, and the frequency of replacement of cushions so that piles can be installed without damage.

C. Manufacturer's Qualifications - The precast concrete manufacturing plant shall be certified by the Precast/ Prestressed Concrete Institute (PCI) Plant Certification Program. Manufacturer shall be certified at the time of bidding. Certification shall be in the following product groups and categories: C3 or C4. Written evidence may be required listing experience, plant facilities, quality control procedures, staff, and any other documentation needed to establish adequate qualifications for manufacture of the piles.

D. Testing and Manufacturing Procedures - Fabrication and in-plant testing shall be in general compliance with the applicable provisions of PCI MNL-116, "Manual for Quality Control for Plants and Production of Precast and Prestressed Concrete Products," latest edition.

E. In-Plant Inspection - In-plant inspection of materials and finished products shall be under the supervision of the Manufacturer's Quality Assurance Manager and shall comply with the provisions of PCI MNL-116 and the Manufacturer's documented quality assurance program.

4.5 PRODUCT DELIVERY, STORAGE AND HANDLING:

A. Piles shall be lifted and supported during manufacturing, storage, transportation and driving operations only at the lifting and supporting locations shown on the shop drawings. All lifting devices shall have a minimum safety factor of three. If stacked in multiple layers during storage and shipment, suitable bunks shall be used between each pile at the support locations, with lifting devices accessible and undamaged.

4.6 MATERIALS:

A. Portland Cement: ASTM C 150, "Standard Specification for Portland Cement." Types I, II, or III cement may be used, provided the C3A content does not exceed 8 percent.

B. Aggregates: ASTM C 33, "Standard Specification for Concrete Aggregates."

C. Water: Clean, potable and free from injurious amounts of oils, acids, alkalis, organic materials, or other substances that may be deleterious to concrete or steel.

D. Admixtures: ASTM C 494, "Standard Specification for Chemical Admixtures for Concrete."

E. Mild Steel Reinforcement: ASTM A 615, "Standard Specification for Deformed and Plain Billet-Steel Bars for Concrete Reinforcement," Grade 60.

F. Wire Spiral Ties: ASTM A 82 "Standard Specification for Steel Wire, Plain, for Concrete Reinforcement," smooth or deformed.

G. Prestressing Strand: ASTM A 416, "Standard Specification for Steel Strand, Uncoated Seven-Wire, for Prestressed Concrete" and ACI 318-07.

H. Jet Pipes: As shown on the drawings or as detailed by the pile manufacturer. Details and material shall be shown on the shop drawings and approved by the ENGINEER.

J. Driving Tips: ASTM A 36 "Standard Specification for Structural Steel," un-galvanized bearing plate and HP stinger tip. Deformed bar anchors shall comply with ASTM A - 496. Welding procedures shall conform to AWS D1.4 and AWS D1.1. Steel Points: ASTM A 27, "Standard Specification for Mild to Medium-Strength Carbon-Steel Casting for General Application," one-piece castings.

4.7 CONCRETE MIXTURES:

A. Mix designs shall be developed by the pile Manufacturer using the materials as specified herein. The designs shall comply with the requirements of ACI 318 and shall have been prepared in accordance with ACI 211.1, for the concrete strengths shown on the contract drawings. The mix designs shall be based on materials previously evaluated by the pile Manufacturer using established methods of statistical quality control that conform to ACI 214.

B. Concrete panels, cap, and all closure pours shall have $F_c' > 5,000$ psi @ 28 days.

4.8 FORMWORK:

A. Provide exterior forms of steel on concrete founded casting beds. Side forms for square piles may have minimum draft adequate for stripping. Interior forms shall be of steel and either the fixed-collapsible or moving-mandrel type capable of maintaining specified dimensional tolerances. Forms must be cleaned and oiled prior to placement of reinforcing.

4.9 PLACEMENT OF REINFORCING:

A. Place prestressing strands symmetrically in the piles and jack simultaneously to specified force. Space spiral wire to specified pitch and tie adequately to maintain position during placement of concrete.

4.10 PLACEMENT OF CONCRETE:

A. Place concrete continuously and consolidate with high frequency vibration. Strike-off unformed surfaces and apply good float finish.

4.11 CURING:

A. Cover forms with moisture-retaining cover and apply heat in uniform manner. Embed thermocouples in piles and connect through central computer to electrically heated test cylinders for constant monitoring of curing temperatures and to insure that test cylinders and piles are heated equally.

4.12 STRIPPING AND HANDLING:

A. When a test cylinder made from the concrete pour for the piles involved reaches the minimum release strength specified, de-tension strands gradually and simultaneously so as to maintain internal stresses uniform across the pile cross sections. Burn strands flush with one end of piles and leave 12" of exposed strands on other end of piles. Handle and transport piles as described in paragraph 1.05 above. Do not drive piles until they have reached both their required 28 day strength and a minimum age of 10 days.

4.13 FINISHES:

A. Piles with minor imperfections which do not impair the structural integrity of the pile, such as small surface holes caused by air bubbles, color variations, form joint marks, and minor chips and spalls will be accepted as is. Marina guide piles shall be sacked to five feet below extreme low water. Piles with defects such as honeycomb which could reduce the structural capacity of the pile will be accepted only if repaired to the ENGINEER'S satisfaction.

4.14 PATCHING OF LIFT LOOPS:

A. Prior to driving piles, cut off and patch embedded lifting loops at elevations higher than 10 feet below the mudline using materials and methods as recommended by the Manufacturer.

4.15 MANUFACTURING TOLERANCES:

A. Length +6 in., -2 in.

B. Width or diameter $\pm 3/8$ in..

C. Sweep (variation from straight line parallel to centerline of pile)
(considered to be a form tolerance) $\pm 1/8$ in. per 10 ft.

D. Position of tendons $\pm 1/4$ in.

E. Position of handling devices+6 in.

F. Variation from specified end squareness or skew $\pm 1/4$ in. per 12
in., $\pm 1/2$ in. max.

G. Local straightness any surface $\pm 1/4$ in. per 10 ft.

H. Longitudinal spacing of spiral reinforcement $\pm 3/4$ in.

5.0 ALUMINUM TIE RODS:

5.1 MATERIAL

A. Tie Rods are to be aluminum 6061-T6 with a minimum tensile strength of 45,000 psi

B. Tie rods shall be sized as shown on the Drawings and conform to ASTM A-36.

C. Tie rods shall be new and of consistent mill stock.

D. Tie rods shall be straight and of uniform diameter

E. Rebar shall not be used as tie rod stock

5.2 COATINGS

- A. Rods are to be coated with Koppers "BITUMASTIC 300 M" or approved equal.
- B. Coatings to extend 4" into cap.
- C. Re-coat anchor end including bearing plate and nuts, after installation with two coats of BITUMASTIC 300 M or approved equal.

5.3 TERMINATION

- A. Tie rods shall be threaded at each end for a minimum of 3" with the appropriate thread pitch for the tie rod diameter.
- B. Tie rods shall be fitted with aluminum double nuts at each end and a 8" x 8" x 1/2" thick aluminum 6061-T6 bearing plate at each end.

5.4 CASING

- A. Tie rods shall be encased in 2" diameter PVC pipe.
- B. The PVC pipe shall be embedded in the cap a minimum of 3".
- C. The PVC coupler shall be installed with manufacturer recommended PVC cleaner and glue to ensure 100% seal.

6.0 GEOTEXTILE CLOTH

6.1 MATERIAL

- A. The geotextile cloth shall be Mirafi HP465 or as approved by the ENGINEER.
- B. Any substitution shall be approved in writing by the ENGINEER.

6.2 INSTALLATION

- A. Geotextile Cloth Placement--The seams of the filter fabric shall overlap a minimum of 24 inches or shall be bonded by cementing or heating. During periods of storage the plastic filter fabric shall be protected against direct sunlight, ultraviolet rays, temperatures greater than 140°F, dirt, mud and debris.
- B. The geotextile fabric shall be placed in the manner and locations shown in the Drawings. At the time of installation, fabric shall be free of all holes, rips and flaws. The surface to receive the fabric shall be of a relatively smooth grade and condition free of

obstructions, debris and depressions. The fabric shall be placed to provide a minimum of 24 inches of overlap for each joint and shall be laid smooth and free of folds, and creases.

ENVIRONMENTAL PROTECTION

1.0 SCOPE

1.1 The Work specified in this section consists of providing all equipment, materials and labor and performing all Work required to prevent environmental pollution and damage as a result of construction operations under this Contract. For the purpose of this specification, environmental pollution and damage are defined as the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance to man; or degrade the utility of the environment for aesthetic, cultural and/or historical purposes. The control of environmental pollution requires consideration of air, water, and land resources. Management of visual aesthetics, solid waste, and noise are associated issues within environmental protection steps.

2.0 QUALITY CONTROL

2.1 The CONTRACTOR shall establish and maintain quality control for environmental protection of all items set forth herein. The CONTRACTOR shall conform to all specifications listed in this section as well as to Federal, State, and Local laws, regulations, and permits. The CONTRACTOR shall record on daily Quality Control Reports or attachments thereto, any problems in complying with laws, regulations, ordinances and permits, and any corrective action taken.

3.0 PERMITS

3.1 The CONTRACTOR shall comply with all requirements under the terms and conditions set out in all permits obtained by the OWNER applicable to the Work. The FDEP Letter of Exemption No. 50-01450569-005 is attached.

3.2 The CONTRACTOR shall comply with all requirements under the terms and conditions of all permits applicable to the Work.

4.0 SUBCONTRACTORS

4.1 Assurance of compliance with this section by any subcontractors on the project shall be the responsibility of the CONTRACTOR.

5.0 NONCOMPLIANCE ACTION

5.1 The ENGINEER will notify the CONTRACTOR and OWNER in writing of any observed noncompliance with the aforementioned Federal, State, or Local laws, regulations, and permits and any elements of the Environmental Specifications Section.

The CONTRACTOR shall be required to take immediate corrective action. If the CONTRACTOR fails or refuses to comply promptly, the ENGINEER may issue an order stopping all or part of the Work until satisfactory corrective action has been taken.

6.0 TURBIDITY CONTROL

6.1 The CONTRACTOR shall operations in a manner to minimize turbidity and shall conform to all water quality standards as prescribed by Chapter 17-3, Florida Administrative Code.

6.2 In the event of a turbidity violation, the ENGINEER will direct the CONTRACTOR to take corrective action which could include changing methods or other action at the discretion of the ENGINEER. Construction activities may not resume until water quality has returned to within standards as deemed acceptable by the ENGINEER and under Chapter 17-3, Florida Administarative Code.

7.0 PROTECTION OF ENVIRONMENTAL RESOURCES

7.1 All environmental resources within the project boundaries and those affected outside the limits of permanent Work under this contract shall be protected throughout project duration and shall be the CONTRACTOR's responsibility until notice of final project acceptance. The CONTRACTOR shall confine his activities to areas defined by the Drawings and Specifications.

7.2 Protection of Land Resources. Prior to the beginning of any construction, the ENGINEER shall identify all land resources to be preserved within the CONTRACTOR's Work area. The CONTRACTOR shall not remove, cut, deface, injure, or destroy land resources including vegetation, trees, shrubs, vines, grasses, top soil, and land forms without special permission from the Owner. No ropes, cables, or guys shall be fastened to or attached to any trees for anchorage unless specifically authorized. Where such special emergency use is permitted, the CONTRACTOR shall provide effective protection for land and vegetation resources at all times as defined in the following paragraphs. The CONTRACTOR shall be responsible for the replacement of any damaged or destroyed vegetation to the satisfaction of the OWNER. Failure to replace damaged or destroyed vegetation by the CONTRACTOR will result in replacement by the OWNER. The cost of replacement, including but not limited to; materials, application, monitoring, engineering time and any other expense required in the restoration will be deducted from monies due to the CONTRACTOR, or from monies which will be due to the CONTRACTOR from the Owner.

7.2.1 Work Area Limits -- The CONTRACTOR shall limit all construction activity within the project areas defined by the Drawings and Contract Specifications. The CONTRACTOR shall not remove, cut, deface, injure, or destroy any land resource without special permission by the OWNER. Monuments and markers shall be protected before construction operations commence. Where construction operations are to be conducted during darkness, the marks shall be visible. The CONTRACTOR shall convey to his personnel and subcontractors the purpose for marking and/or protection for all necessary objects. The location of the CONTRACTOR's field offices, staging areas, stockpile storage, and any temporary buildings shall be placed in areas specified within the Specifications Sections or with approval of the OWNER.

7.2.2 Protection of Landscape -- Trees, shrubs, grasses, land forms, and other landscape features to be preserved shall be designated by the OWNER and identified by the CONTRACTOR by protective marking, fencing, or other protective and noticeable means. To avoid damage, fill placed in close proximity to dunes, seawalls, or vegetation by direct pipeline discharge will be located at adequate distances to avoid damage to dunes, seawalls, and vegetation. Mechanical means shall be used to place such material.

7.2.3 Protection of Disturbed Areas -- Runoff from the construction site shall be controlled by construction of diversion ditches, benches and berms to retard and divert runoff to protected drainage courses, and any measures required by area-wide plans approved under Paragraph 208 of the Clean Water Act. Other methods shall be utilized as necessary to effectively prevent erosion and control sedimentation.

7.2.4 Temporary Excavations -- Embankments for plant and/or Work areas shall be controlled to protect adjacent areas from despoilment.

7.2.5 Waste Disposal -- Solid wastes (including clearing debris) shall be handled in environmentally sound manners, placed in containers, and discarded on regular schedules. It shall be the CONTRACTOR's responsibility to maintain all Work areas to acceptable standards and to transport all solid waste off the properties and dispose of according to Federal, State, and Local requirements for solid waste. All handling and disposal of solid waste shall be conducted to prevent contamination.

7.2.6 Chemical waste shall be stored in corrosion resistant containers, removed from the Work area and disposed of in accordance with Federal, State, and Local regulations.

7.2.7 Discarded materials other than those which can be included in the solid waste category will be handled as directed by the ENGINEER.

8.0 WATER RESOURCES PROTECTION

8.1 The CONTRACTOR shall keep construction activities under surveillance, management, and control to avoid pollution of surface and ground waters. Monitoring of all water resource areas affected by construction activities shall be the responsibility of the CONTRACTOR. The CONTRACTOR shall not discharge or permit discharge into the waters of canals, waterways, ditches, etc., fuels, oils, bitumens, garbage, sewage, or other materials which may be harmful to fish, wildlife, or vegetation, or that may be detrimental to outdoor recreation. The CONTRACTOR will be responsible for investigating and complying with all applicable Federal, State, and Local laws and regulations governing pollution of waters. All Work under this contract shall be performed in such a manner that objectionable conditions will not be created in waters through or adjacent to the project areas.

9.0 AIR RESOURCES PROTECTION

9.1 The CONTRACTOR shall keep construction activities under surveillance, management, and control to avoid pollution of air resources. All activities, equipment, processes, and Work operated or performed by the CONTRACTOR in accomplishing the specified construction shall be in strict accordance with the applicable air pollution standards of the State of Florida (Florida Statute, Chapter 403 and others) and all Federal emission and performance laws and standards.

10.0 FISH AND WILDLIFE RESOURCES PROTECTION

10.1 The CONTRACTOR shall keep construction activities under surveillance, management, and control to minimize interference with, disturbance to, and damage of fish and wildlife.

10.2 Manatee Monitoring. The CONTRACTOR shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. If siltation barriers are used, the CONTRACTOR shall ensure that the materials will not become entangled, are properly secured and are regularly monitored to avoid manatee entrapment. All vessels associated with the project shall operate at "no wake/idle" speeds at all times while in water where the draft of the vessel provides less than a 4-foot clearance from the bottom and that vessels will follow routes of deep water whenever possible. If manatees are seen within 100 yards of the active daily construction and/or dredging activities, all appropriate precautions shall be implemented to ensure protection of the manatee. These precautions shall include operating all moving equipment no closer than 50 feet to a manatee. The CONTRACTOR shall immediately shut down and cease operations of any equipment that is within 50 feet of a manatee during construction.

10.3.1 Manatees are protected under the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Florida Manatee Sanctuary Act. All construction personnel shall be advised that there are civil and criminal penalties for harming, harassing, or killing manatees.

10.3.2 Prior to commencement of construction, each vessel involved in the construction shall display in a prominent location, visible to the operator, an 8-1/2 inch by 11-inch temporary placard reading "Manatee Habitat/Idle Speed in Construction Area". A secondary temporary 8-1/2 inch by 11-inch placard reading, "Warning Manatee Area" will be posted in a location prominently visible to water-related construction crews. These conditions are a specific requirement of the FDNR permit.

10.3.3 The CONTRACTOR shall report any collision with and, or injury to a manatee to the FWC (1-800-DIAL-FMP) and to the U. S. Fish and Wildlife Service, Jacksonville Office (904/791-2580), for investigation so that the correct immediate action may be taken. During construction of the project, the CONTRACTOR shall maintain a log detailing any manatee sightings, collisions, or injuries should they occur, and following completion of the project the CONTRACTOR shall submit a report to the ENGINEER summarizing these occurrences.

11.0 DUST AND NOISE CONTROL

11.1 The CONTRACTOR shall be required to maintain all access roads, ingress routes, egress routes, and all other Work areas within or without the project boundaries free from dust which would cause a hazard or nuisance to others.

11.2 All hauling equipment and booster pump engines used on this Work shall be equipped with satisfactory mufflers or other noise abatement devices. The use of horns and whistle signals shall be held to the minimum necessary in order to assure as safe and as quiet an operation as possible. The CONTRACTOR shall conduct his operations so as to comply with all federal, state, and local laws pertaining to noise and follow any additional OWNER guidelines. The use of horns, the use of whistle signals, and handling of dredge pipelines shall be held to the minimum necessary in order to assure as quiet an operation as possible.

12.0 POST-CONSTRUCTION CLEANUP

12.1 The CONTRACTOR shall remove all evidence of temporary construction facilities at the project sites, staging areas, and roads, Work areas, structures, foundations of temporary structures, and waste or excess material stockpiles. The CONTRACTOR shall restore all landscape features damaged or destroyed during construction operations outside the limits of the proposed Work area. This work will be accomplished at the CONTRACTOR's expense and subject to the approval of the ENGINEER.

Essentially, the CONTRACTOR shall return all areas to as near pre-construction as possible and agreed to by the ENGINEER.

13.0 ENVIRONMENTAL PROTECTION PLAN

13.1 The CONTRACTOR shall submit a written Environmental Protection Plan to the ENGINEER, at the Pre-Construction Conference. The Environmental Protection Plan shall include but not be limited to the following:

- (a) Oil Spill Contingency Plan.
- (b) Environmental monitoring plans for the protection of air, land and water resources and noise prevention.
- (c) Procedures to be implemented in order to provide environmental protection and to comply with applicable laws and regulations. The CONTRACTOR shall provide written assurance that immediate action will be taken to correct pollution of the environment due to accident, natural causes or failure to follow the procedures set out in the Environmental Protection Plan.
- (d) The CONTRACTOR shall prepare drawings showing locations of proposed temporary excavations or embankments for haul roads, material storages areas, sanitary facilities and stockpiles of debris or spoil materials. The plan shall include the measures to be taken for flagging and marking the limits of use areas.
- (e) The CONTRACTOR shall identify the person responsible for implementing the Environmental Protection Plan. The CONTRACTOR's responsible person shall have the responsibility and authority to act for the CONTRACTOR in all environmental protection matters and shall report directly to the CONTRACTOR's top management.

3.0 SUPPLEMENTARY CONDITIONS

The following conditions amend or supplement the Standard General Conditions of the Construction Contract (EJCDC No. C-700) (2007 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended, or supplemented remain in full force and effect. Articles 18 through 25, inclusive, are supplemental and in addition to the Standard General Conditions.

ARTICLE 1 -- DEFINITIONS

DELETE PARAGRAPH 1.3.8 OF THE STANDARD GENERAL CONDITIONS IN ITS ENTIRETY AND INSERT THE FOLLOWING IN ITS PLACE:

"Substantial Completion" - The Work is complete and ready for final payment, except for minor corrective or "punch list" items not requiring additional installation of piles and panels, casting, formwork, tierods and deadmen . The terms "substantially complete" and "substantially completed" as applied to all or part of the Work, refer to Substantial Completion thereof.

ARTICLE 2 -- PRELIMINARY MATTERS

SC-2.2 AMEND PARAGRAPH 2.2 OF THE STANDARD GENERAL CONDITIONS TO READ AS FOLLOWS:

"DISTRICT will furnish CONTRACTOR five (5) copies of the Contract Documents at no cost for use during construction. Additional copies will be furnished at the cost of reproduction and postage."

SC-2.6 DELETE PARAGRAPH 2.6.1 OF THE STANDARD GENERAL CONDITIONS IN ITS ENTIRETY.

SC-2.7 DELETE PARAGRAPH 2.7 OF THE STANDARD GENERAL CONDITIONS IN ITS ENTIRETY AND INSERT THE FOLLOWING IN ITS PLACE:

"When the CONTRACTOR delivers the executed counterparts of the Agreement to OWNER, CONTRACTOR shall also deliver to OWNER with a copy to ENGINEER, certificates and other evidence of insurance requested by OWNER which CONTRACTOR is required to purchase and maintain in accordance with Paragraphs GC-5.4, SC-5.4, SC-5.6 and SC-5.7 of these Supplementary Conditions."

ARTICLE 5 -- BONDS AND INSURANCE

SC-5.1 AMEND PARAGRAPH 5.1 OF THE STANDARD GENERAL CONDITIONS, BY ADDING THE FOLLOWING:

..."The surety must be licensed to conduct business in the state of Florida."

AND SO AMENDED PARAGRAPH 5.1 OF THE STANDARD GENERAL CONDITIONS REMAINS IN EFFECT.

SC-5.4 ADD A NEW PARAGRAPH IMMEDIATELY AFTER PARAGRAPH 5.4.13 OF THE STANDARD GENERAL CONDITIONS, WHICH IS TO READ AS FOLLOWS:

5.4.14. The limits of liability for the insurance required by Paragraphs 5.3 and 5.4 of the Standard General Conditions shall provide coverage for not less than the following amounts or greater where required by law:

1. Comprehensive General Liability Insurance:

A. Bodily Injury Liability:
\$1,000,000 per claim/occurrence

- B. Property Damage Liability:
\$250,000
- 2. Contractual Liability Insurance:
 - A. Bodily Injury Liability:
\$1,000,000
 - B. Property Damage Liability:
\$250,000
- 3. Worker's Compensation and Employer's Liability Insurance:
 - A. Worker's Compensation: Florida statutory minimum.
 - B. Employer's Liability: Bodily Injury
\$1,000,000
- 6. Motor Vehicle Liability:
 - A. Bodily Injury Liability:
\$1,000,000

OWNER and ENGINEER shall be named as additional insureds.

SC-5.6
through
SC 5.15,
inclusive

DELETE PARAGRAPHS 5.6 THROUGH 5.15 OF THE STANDARD GENERAL CONDITIONS IN THEIR ENTIRETY.

SC-5.16

ADD A NEW PARAGRAPH IMMEDIATELY AFTER PARAGRAPH 5.15 OF THE STANDARD GENERAL CONDITIONS WHICH IS TO READ AS FOLLOWS:

- 5.16. Certificates in duplicate from the insurance carrier stating the limits of liability and expiration date shall be filed with OWNER before operations are begun. Such certificates shall not merely name the types of policy provided but shall specifically refer to this Contract and shall contain a separate express statement of compliance with each of the requirements as set forth in this Article. The certificates shall, in addition to the information relative to the insurance required, contain the following:
 - 5.16.1. Inception and expiration dates of insurance policy.
 - 5.16.2. Limits of liability provided (Public Liability and Property Damage).
 - 5.16.3. Coverage provided, including special hazards if required.
 - 5.16.4. Name of insurance company.
 - 5.16.5. Policy number.
 - 5.16.6. Additional interests covered.
 - 5.16.7. Statement that the Explosion, Collapse, and Underground exclusions do not apply.
 - 5.16.8. Certificate shall reflect self-insured retention applicable to any contract of insurance.
 - 5.16.9. Excess liability certified contracts must state underlying insurance requirements.
 - 5.16.10. Project number and nature of work.

No certificate will be accepted which exculpates the issuer or reduces any rights conferred on the OWNER by the above certificates, nor will they be accepted unless the certificates bear a live signature of a direct representative of a company authorized to do business in Florida.

No certificate will be accepted unless the person signing the certificate certifies, in a separate letter, his/her exact relationship with the insurance carrier or carriers indicated in the certificate.

The OWNER may, at their discretion, modify or waive any of the foregoing requirements. No contract of insurance containing a "claims made" insuring agreement will be acceptable unless the CONTRACTOR offering such insurance to fulfill the requirements of this Contract agrees that each such contract of insurance shall be renewed for the entire existence of the contractor, their successors or assigns; and that on termination of such coverage which is not replaced by a similar contract with the required limits of liability, a "tail policy" will be purchased with limits not less than those required by this Contract.

ARTICLE 6 -- CONTRACTOR'S RESPONSIBILITIES

SC-6.8 INSERT A NEW PARAGRAPH 6.8 AS FOLLOWS:

Contractor shall identify all subcontractors and suppliers and others individually responsible for more than five percent (5%) of the total work. No more than forty percent (40%) of the dollar value of the total contract work may be accomplished by subcontractors. The balance of the work must be accomplished by selected Contractor's own forces. Within five (5) days after the notice of award, CONTRACTOR shall submit to the OWNER a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for which such identification is required on the form List of Subcontractors provided by the OWNER. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, person or organization if requested by the OWNER. The OWNER or ENGINEER, who after due investigation has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, may before the Notice of Award is given request apparent Successful Bidder to submit an acceptable substitute, without an increase in Bid price. If the CONTRACTOR declines to make any such substitution, the OWNER may award the contract to another bidder/CONTRACTOR that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. Declining to make requested substitutions will not constitute grounds for the release of the Bid security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom the OWNER or ENGINEER does not make written objection prior to giving of the Notice of Award will be deemed acceptable to the OWNER and ENGINEER subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.8.2 of the Standard General Conditions.

SC-6.20 ADD THE FOLLOWING NEW SUBPARAGRAPHS TO PARAGRAPH 6.20 OF THE STANDARD GENERAL CONDITIONS:

- 6.20.4. Attention is directed to federal, state, and local laws, rules and regulations concerning construction safety and health standards. The CONTRACTOR agrees not to require any worker to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to his health or safety.
- 6.20.5. CONTRACTOR shall remove all debris from the project area prior to final completion. This requirement is mandatory as to prevent injuries.

SC-6.31 ADD THE FOLLOWING TO PARAGRAPH 6.31:

*This indemnity shall extend also to any damage to real property, or any interest therein.

- 6.33.1 ADD A NEW SUBPARAGRAPH 6.33.1 AS FOLLOWS: Pursuant to F. S. 725.06, the indemnity of the CONTRACTOR shall not be limited. The specific consideration for this indemnity is the sum of \$10.00, to be paid by the OWNER as an addition to the initial payment made to the CONTRACTOR.

SC-8-11 DELETE PARAGRAPH 8.11 IN ITS ENTIRETY.

ARTICLE 9 -- ENGINEERS STATUS DURING CONSTRUCTION

SC-9.3 ADD THE FOLLOWING NEW SUBPARAGRAPH TO PARAGRAPH 9.3 OF THE STANDARD GENERAL CONDITIONS:

9.3.1. Authority and Duties of Resident Project Representative: A Resident Project Representative employed by the ENGINEER shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. A Resident Project Representative is not authorized to revoke, alter, or waive any provision of the contract. The Resident Project Representative is not authorized to issue instructions contrary to the Drawings and Specifications or to act as foreman for the CONTRACTOR.

SC-9.4 DELETE THE SECOND AND THIRD SENTENCES OF PARAGRAPH 9.4 OF THE STANDARD GENERAL CONDITIONS.

SC-9.11 MODIFY PARAGRAPH 9.11 TO READ AS FOLLOWS:

ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability for the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing.*

SC-9.12 DELETE 9.12 IN ITS ENTIRETY.

SC-9.13 ADD THE FOLLOWING NEW SUBPARAGRAPH TO PARAGRAPH 9.13 OF THE STANDARD GENERAL CONDITIONS:

SC-9.13.6 Notwithstanding anything in the Contract Documents to the contrary, ENGINEER shall always be the representative of the OWNER with the duty of professional loyalty solely to the OWNER. In all matters, the ENGINEER will represent the interests of the OWNER within the bounds of ENGINEER'S professional responsibility and ethical constraints, and will have no duty of impartiality to the CONTRACTOR. This provision shall take priority over any other provision of the Contract Documents affecting the role of the ENGINEER, OWNER AND CONTRACTOR.

ARTICLE 12 -- CHANGE OF CONTRACT TIMES

ADD THE FOLLOWING NEW SUBPARAGRAPH TO PARAGRAPH 9.13 OF THE STANDARD GENERAL CONDITIONS:

SC-12.2.1 If the Work is not completed within the time provided for Substantial Completion (final completion), Owner may permit the Work to proceed, but in so doing shall not be deemed to have waived any rights it may have because of time being of the essence. In any event, and whether or not time of the essence has been waived, if the time for completion has expired, Owner may unilaterally fix a new date for final completion by written notice of not less than five (5) calendar days.

ARTICLE 14 -- PAYMENT TO CONTRACTOR AND COMPLETION

SC-14.1 ADD THE FOLLOWING NEW SUBPARAGRAPHS IMMEDIATELY AFTER PARAGRAPH 14.1 OF THE STANDARD GENERAL CONDITIONS:

- 14.1.1. There will be one progress payment and one final payment for the contract. The progress payment will be made after completion of mobilization and installation of a minimum of 120 linear feet of seawall as per the Construction Drawings and Technical Specifications, in such amount as is approved by the ENGINEER, in accordance with Article 14 of the Standard General Conditions, not to exceed twenty-five percent (40%) of the Contract Price of. Final payment will be made in accordance with 14.13 of the Standard General Conditions.
- 14.1.2. Completion of mobilization, for purposes of the progress payment, shall require that the CONTRACTOR have all needed equipment and supplies on site and in operation to the extent of successfully installing 120 linear feet of seawall to the satisfaction of the ENGINEER.
- 14.1.3. The Owner shall have the right to hold retainage as security for payment by CONTRACTOR to Owner of any sum for which CONTRACTOR may be liable to indemnify Owner, arising out of any violation of any applicable permit or any damage or other claim arising from CONTRACTOR's performance of the Work. The amount of such retainage shall be such amount as Owner determines to be appropriate security for such indemnity, up to 10% of the Contract Price, or the total potential fines which may be imposed by any and all agencies for any permit violations. Such retainage shall be held by Owner, without interest, until all indemnities have been paid, or Owner is otherwise reasonably assured that no further claims will be made for which CONTRACTOR would be obligated to indemnify Owner under this Agreement.

ARTICLE 15 -- SUSPENSION OF WORK AND TERMINATION

SC-15.2 MODIFY PARAGRAPH 15.2.1 TO READ AS FOLLOWS:

- 15.2.1. If CONTRACTOR persistently fails 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 2.9, as adjusted from time to time pursuant to paragraph 6.6, and failure to prosecute the Work at a rate which, in the discretion of ENGINEER, would not result in completion of the Work within the time allowed for Substantial Completion);

ARTICLE 17 -- MISCELLANEOUS - GIVING NOTICE:

SC-17.1.1 ADD THE FOLLOWING NEW SUBPARAGRAPH TO PARAGRAPH 17.1 OF THE STANDARD GENERAL CONDITIONS:

- 17.1.1. CONTRACTOR shall provide OWNER and ENGINEER with a telephone number by which the supervisor of CONTRACTOR's work crew can be contacted at any time, 24 hours a day. In addition, written notice may be given at the election of the giver, by fax, at the fax numbers shown below, followed by regular mail or delivery, as provided in 17.1.

OWNER fax: (561) 881-3304
ENGINEER fax: (561) 748-6745
CONTRACTOR phone: _____
CONTRACTOR fax: _____

Any fax notice will be deemed to have been delivered upon transmission, if transmitted between the hours of 8 a.m. and 5 p.m. local time; otherwise, the fax notice will be deemed to have been delivered at 8 a.m. the following business day.

SC-17.5 Modify paragraph 17.5 of the Standard General Conditions as follows:

Delete reference to "attorneys," so that no attorney's fees award is available to any prevailing party in any dispute arising under this Agreement.

THE FOLLOWING ARTICLES ARE SUPPLEMENTARY AND SHALL BE IN ADDITION TO THE STANDARD GENERAL CONDITIONS:

ARTICLE 19 -- CONFLICTS

SC-19.0 To the extent that there is an express conflict between the Supplemental Conditions of the Standard General Conditions and the remainder of the contract documents, the Supplemental Conditions of the Standard General Conditions hereto shall prevail. Otherwise, the Supplemental Conditions of the Standard General Conditions are supplementary to the other contract documents.

ARTICLE 22 -- CONSTRUCTION SUPERINTENDENT

SC-22.0 The CONTRACTOR shall designate, in writing to the ENGINEER, a superintendent and any necessary assistants satisfactory to the ENGINEER to receive the OWNER and ENGINEER'S instructions. The Superintendent(s) shall not be changed except with the consent of the ENGINEER, unless the Superintendent proves to be unsatisfactory to the CONTRACTOR and ceases to be in his employ. The Superintendent(s) shall follow without delay all instructions of the DISTRICT or the ENGINEER or their Resident Project Representative in the prosecution and completion of the work and every part thereof. A Superintendent must be on the site at all times during project construction or otherwise make himself available to the ENGINEER.

ARTICLE 23 -- ENGINEER'S SITE VISITS

SC-23.0 The ENGINEER may direct work change initiatives and or change orders, but the presence of the ENGINEER shall not relieve the CONTRACTOR of responsibility for the proper execution of the work in accordance with the specifications. The ENGINEER shall have unlimited access to the project, equipment and materials. The CONTRACTOR will be required to furnish, at the request of the ENGINEER suitable transportation from the shore, to and from any and all attendant equipment.

Should the CONTRACTOR refuse, neglect, or delay compliance with these requirements, the specific facilities may be furnished and maintained by the ENGINEER and the cost thereof will be deducted from any amounts due or to become due the CONTRACTOR.

ARTICLE 24 -- PERMITS AND LICENSES

SC-24.0 A Department of Environmental Protection (DEP) permit, No. 50-00140569-005 accompanies the TECHNICAL SPECIFICATIONS. The DEP permit constitutes both state and federal review and authorization under the SPGP program. Any other permits and licenses required for the prosecution of the

work as specified in Section 6.13 of the Standard General Conditions shall be secured and paid for by the CONTRACTOR, specifically and without limitations. The CONTRACTOR shall obtain any and all certifications and/or approvals required by DEP and the U.S. Coast Guard regarding tug and barge and related equipment. CONTRACTOR shall be responsible for strict compliance with all permits

ARTICLE 25 -- UTILITIES

SC-25 ADD THE FOLLOWING:

- 25.1 Water -- In the event water is made available by the OWNER, the CONTRACTOR shall take all necessary steps to ensure that such water is properly capped to prevent leaks and waste as determined by the ENGINEER. Before final acceptance, temporary connections and piping installed by the CONTRACTOR shall be removed in a manner satisfactory to the ENGINEER.
- 25.2 Electricity -- All electric current required by the CONTRACTOR shall be furnished at his own expense. In the event electricity is made available by the OWNER, the CONTRACTOR shall, at his own expense, install a meter to determine the amount of current used by him and such electricity will be paid for by, or charged to, the CONTRACTOR at prevailing rates or at reasonable rates as determined by the ENGINEER. All temporary lines will be furnished, installed, connected, and maintained by the CONTRACTOR in a workmanlike manner satisfactory to the ENGINEER.
- 25.3 Telephone -- All telephone services required by the CONTRACTOR shall be furnished at his own expense. All temporary lines will be furnished, installed, connected, and maintained by the CONTRACTOR in a workmanlike manner satisfactory to the ENGINEER.

ACORD. CERTIFICATE OF LIABILITY INSURANCE

OP ID VJ
VANCO01

DATE (MM/DD/YYYY)
02/08/08

PRODUCER
Gateway Insurance Agency
Fort Lauderdale Branch
2430 W. Oakland Park Blvd.
Fort Lauderdale FL 33311
Phone: 954-735-5500 Fax: 954-735-2852

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

The Vance Construction Co.
Attn: Mr. Manny Gomez
7166 Interpace Road
Riviera Beach FL 33407

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Mid-Continent Casualty Co.	
INSURER B:	Progressive	10193
INSURER C:	Ins Co of the State of PA	13889
INSURER D:		
INSURER E:		

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY	04GL000691551	10/10/07	10/10/08	EACH OCCURRENCE \$1000000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				DAMAGE TO RENTED PREMISES (Ea occurrence) \$100000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$1000000 GENERAL AGGREGATE \$2000000 PRODUCTS - COMP/OP AGG \$2000000
B		AUTOMOBILE LIABILITY	CA04137488-1	10/10/07	10/10/08	COMBINED SINGLE LIMIT (Ea accident) \$500000
		<input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per person) \$
						BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
		<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: EA ACC \$
		EXCESS/UMBRELLA LIABILITY				AGG \$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	2959626	12/13/07	12/13/08	WC STATUTORY LIMITS
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				OTR
						E.L. EACH ACCIDENT \$100000
						E.L. DISEASE - EA EMPLOYEE \$100000
						E.L. DISEASE - POLICY LIMIT \$500000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

TOWLA02

TOWN OF LAKE PARK
535 PARK AVENUE
LAKE PARK, FL 33403

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
[Signature]

Robert Cutcher

From: Vanceconsco@aol.com
Sent: Friday, February 08, 2008 2:24 PM
To: depth@gate.net
Subject: Robert please find contractor lic

Licensee Details

Licensee Information

Name: VANCE, JAMES EDGAR JR (Primary Name)
THE VANCE CONSTRUCTION CO (DBA Name)
Main Address: P O BOX 4592
WEST PALM BCH Florida 33402
County: PALM BEACH

License Mailing:

LicenseLocation: 8028 PIONEER RD
WEST PALM BCH FL 33402
County: PALM BEACH

License Information

License Type: Certified General Contractor
Rank: Cert General
License Number: CGC042005
Status: Current,Active
Licensure Date: 11/19/1987
Expires: 08/31/2008

Special Qualifications Qualification Effective
Qualified Business License Required 02/20/2004

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Department of Environmental Protection

Jeb Bush
Governor

OCT 27 2004

Southeast District
400 N. Congress Ave. Suite 200
West Palm Beach, Florida 33401

Colleen M. Castille
Secretary

Paul Carlisle
Town of Lake Park
650 Old Dixie Hwy
Lake Park, FL 33403

Re: File No.: 50-0140569-005
File Name: Lake Park-Town of Lake Shore Park

Dear Mr. Carlisle:

On September 24, 2004, we received your application for an exemption and on October 5, 2004, your application was complete to perform the following activity: to replace 630-lineal feet of seawall within one foot of the existing seawall. The project is located in Lake Worth, Class III Waters, adjacent to Lake Shore Drive, Lake Park (Section 21, Township 42 South, Range 43 East) in Palm Beach County (N 26° 47' 53.82" / W 80° 3' 8.27").

Your application has been reviewed to determine whether it qualifies for any of three kinds of authorization that may be necessary for work in wetlands or waters of the United States. The kinds of authorization are (1) regulatory authorization, (2) proprietary authorization (related to state-owned submerged lands), and (3) federal authorization. The authority for review and the outcomes of the reviews are listed below. Please read each section carefully. Your project may not have qualified for all three forms of authorization. If your project did not qualify for one or more of the authorizations, refer to the specific section dealing with that authorization for advice on how to obtain it.

1. Regulatory Review. - [GRANTED]

The Department has the authority to review your project under Part IV of Chapter 373, Florida Statutes (F.S.), Title 62, Florida Administrative Code (F.A.C.), and in accordance with operating agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C.

Based on the information you submitted, we have determined that your project is exempt from the need to obtain a DEP Environmental Resource Permit under Rule 40E-4.051(4)(b), F.A.C.

2. Proprietary Review (related to state-owned lands). - [GRANTED]

The Department acts as staff to the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) and issues certain authorizations for the use of sovereign submerged lands. The Department has the authority to review your project under Chapters 253 and 258, F.S., Chapters 18-20 and 18-21, F.A.C., and Section 62-343.075, F.A.C.

Your project will occur on sovereign submerged land and will require authorization from the Board of Trustees to use public property. As staff to the Board of Trustees, we have reviewed the proposed project and have determined that, as long as it is located within the described boundaries and is consistent with the attached general consent conditions, the project qualifies for consent to use sovereign submerged lands. Therefore, pursuant to Chapter 253.77, Florida Statutes, you may consider this letter as authorization from the Board of Trustees to perform the project.

3. Federal Review (State Programmatic General Permit). - [GRANTED]

Federal authorization for the proposed project is reviewed by DEP pursuant to an agreement between the Department and the U.S. Army Corps of Engineers (Corps). The agreement is outlined in a document titled *Coordination Agreement Between the U.S. Army Corps of Engineers and the Florida Department of Environmental Protection State Programmatic General Permit, Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act.*

"More Protection, Less Process"

Printed on recycled paper.

Your project has been reviewed for compliance with a State Programmatic General Permit (SPGP). As shown on the attached drawings, the proposed project is consistent with the SPGP program. The attached Corps general conditions apply to your project. No further permitting for this activity is required by the Corps. The determinations in this letter are based solely on the information provided to the Department and on the statutes and rules in effect when the application was submitted. The determinations are effective only for the specific activity proposed. These determinations shall automatically expire if site conditions materially change or if the governing statutes or rules are amended. In addition, any substantial modifications in your plans should be submitted to the Department for review, as changes may result in a permit being required. In any event, this determination shall expire after one year.

This letter does not relieve you from the responsibility of obtaining other permits (federal, state, or local) that may be required for the project.

NOTICE OF RIGHTS OF SUBSTANTIALLY AFFECTED PERSONS

This letter acknowledges that the proposed activity is exempt from ERP permitting requirements under Rule 40E-4.051(4)(b), F.A.C. This determination is final and effective on the date filed with the Clerk of the Department unless a sufficient petition for an administrative hearing is timely filed under sections 120.569 and 120.57 of the Florida Statutes as provided below. If a sufficient petition for an administrative hearing is timely filed, this determination automatically becomes only proposed agency action subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. The procedures for petitioning for a hearing are set forth in the attached notice.

This determination is based on the information you provided the Department and the statutes and rules in effect when the application was submitted and is effective only for the specific activity proposed. This determination shall automatically expire if site conditions materially change or the governing statutes or rules are amended. In addition, any substantial modifications in your plans should be submitted to the Department for review, as changes may result in a permit being required. In any event, this determination shall expire after one year.

Be advised that your neighbors and other parties who may be substantially affected by the proposed activity allowed under this determination of exemption have a right to request an administrative hearing on the Department's decision that the proposed activity qualifies for this exemption. Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in a final determination that the proposed activity is not authorized under the exemption established under Rule 40E-4.051(4)(b), F.A.C.

The Department will not publish notice of this determination. Publication of this notice by you is optional and is not required for you to proceed. However, in the event that an administrative hearing is held and the Department's determination is reversed, proceeding with the proposed activity before the time period for requesting an administrative hearing has expired would mean that the activity was conducted without the required permit.

If you wish to limit the time within which all substantially affected persons may request an administrative hearing, you may elect to publish, at your own expense, the enclosed notice (Attachment A) in the legal advertisement section of a newspaper of general circulation in the county where the activity is to take place. A single publication will suffice.

If you wish to limit the time within which any specific person(s) may request an administrative hearing, you may provide such person(s), by certified mail, a copy of this determination, including Attachment A.

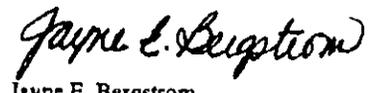
For the purposes of publication, a newspaper of general circulation means a newspaper meeting the requirements of sections 50.011 and 50.031 of the Florida Statutes. In the event you do publish this notice, within seven days of publication, you must provide to the following address proof of publication issued by the newspaper as provided in section 50.051 of the Florida Statutes. If you provide direct written notice to any person as noted above, you must provide to the following address a copy of the direct written notice.

File Name: Town of Lake Park-Lake Shore Park
FDEP File No.: 50-0140569-005
Page 3

Florida Department of Environmental Protection
Southeast District
Submerged Lands & Environmental Resources Program
400 N. Congress Ave., Suite 200
West Palm Beach, FL 33401

If you have any questions, please contact Jennifer Smith at 561/681-6633 or at jennifer.k.smith@dep.state.fl.us.
When referring to your project, please use the FDEP file name and number listed above.

Sincerely,



Jayne E. Bergstrom
Environmental Manager
Submerged Lands & Environmental
Resources Program

Enclosures

cc: USACOE - Palm Beach Gardens
Tracy C. Robb, P.E., Calvin, Giordano & Associates, trobb@calvin-giordano.com

GENERAL CONSENT CONDITIONS:

- (1) Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.
- (2) Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.
- (3) Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S., or Chapter 18-14, F.A.C.
- (4) Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.
- (5) Construction, use, or operation of the structure or activity shall not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004, and 68A-27.005, F.A.C.
- (6) Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.
- (7) Structures or activities shall not create a navigational hazard.
- (8) Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of Rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident, or fire.
- (9) Structures or activities shall be constructed, operated, and maintained solely for water dependent purposes, or for non-water dependent activities authorized under paragraph 18-21.004(1)(f), F.A.C., or any other applicable law.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF DETERMINATION OF EXEMPTION

The Department of Environmental Protection gives notice that your project to replace 630-linear feet of seawall within one foot of the existing seawall in Lake Worth, Class III Waters, adjacent to Lake Shore Drive, Lake Park (Section 21, Township 42 South, Range 43 East) in Palm Beach County (N 26° 47' 53.82" / W 80° 3' 8.27"), has been determined to be exempt from requirements to obtain an environmental resource permit.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Mediation is not available.

If a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Intervention will be permitted only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-106.205 of the Florida Administrative Code.

In accordance with rules 28-106.11(2) and 62-110.106(3)(a)(4), petitions for an administrative hearing must be filed within 21 days of publication of the notice or receipt of written notice, whichever occurs first. Under rule 62-110.106(4) of the Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000 prior to the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. Upon motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect, the Department may also grant the requested extension of time.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that right.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301.

Under sections 120.569(2)(c) and (d) of the Florida Statutes, a petition for administrative hearing shall be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

Complete copies of all documents relating to this determination of exemption are available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, at the Southeast District office, 400 North Congress Avenue, West Palm Beach, Florida.

GENERAL CONDITIONS FOR FEDERAL AUTHORIZATION FOR SPGP III-R1

General Conditions

- 1. The time limit for completing the work authorized ends on June 17, 2005.
- 2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
- 3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
- 4. If you sell the property associated with this permit, you must obtain the signature and mailing address of the new owner in the space provided below and forward a copy of the permit to this office to validate the transfer of this authorization.
- 5. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Further Information:

- 1. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal projects.
- 2. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
- 3. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

4. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 3 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE-SIGNATURE)

(DATE)

(NAME-PRINTED)

(ADDRESS)

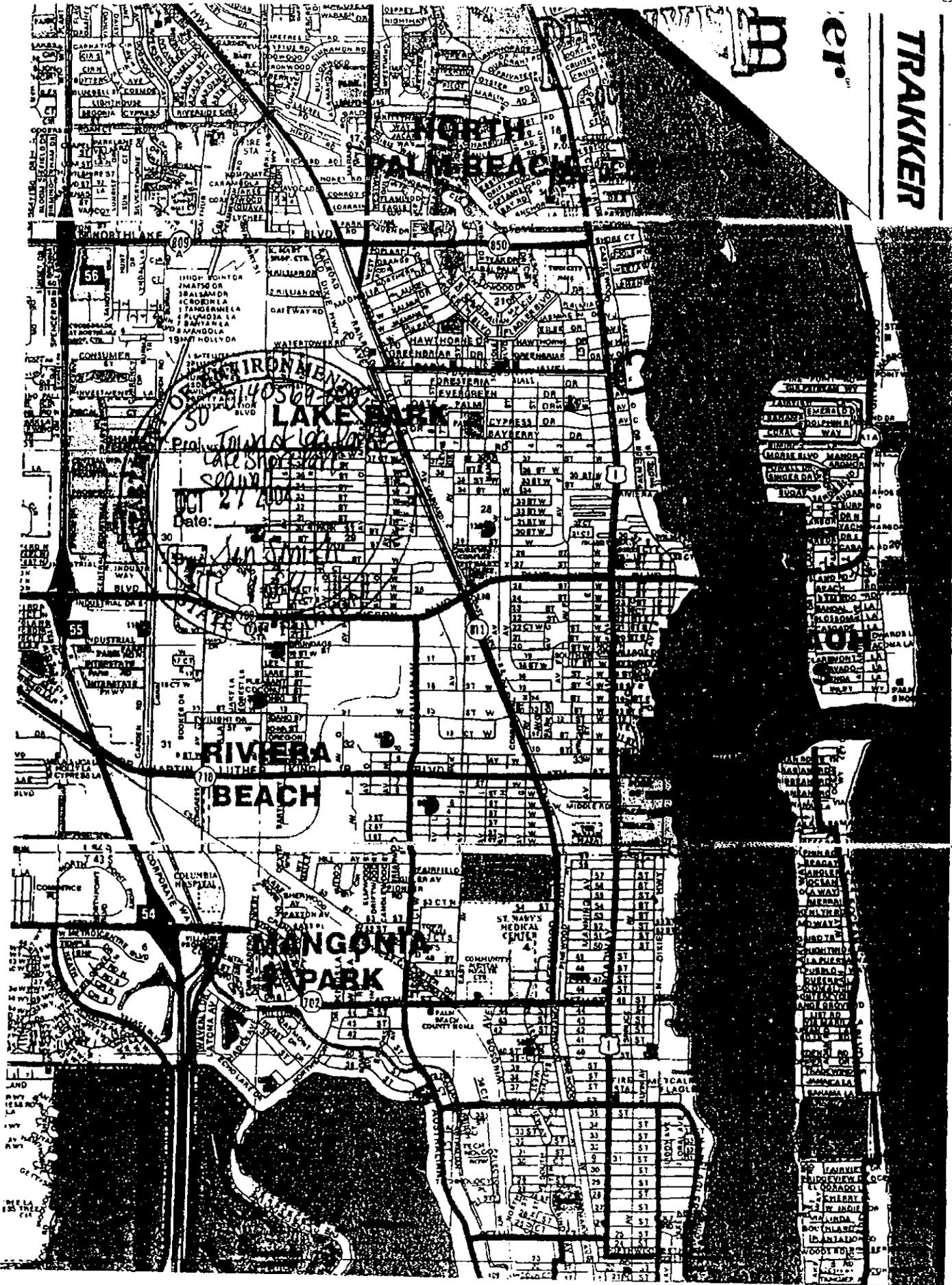
Manatee Conditions for Federal Authorization

1. The permittee shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel are responsible for observing water-related activities for the presence of manatee(s).
2. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Florida Manatee Sanctuary Act of 1978. The permittee and/or contractor may be held responsible for any manatee harmed, harassed, or killed as a result of construction activities.
3. Siltation barriers shall be installed and shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be monitored regularly to avoid manatee entrapment. Barriers shall not block manatee entry to or exit from essential habitat.
4. All vessels associated with the project shall operate at "no wake/idle" speeds at all times while in water where the draft of the vessel provides less than four feet clearance from the bottom and that vessels shall follow routes of deep water whenever possible.
5. If a manatee is sighted within 100 yards of the project area, all appropriate precautions shall be implemented by the permittee/contractor to ensure protection of the manatee. These precautions shall include the operation of all moving equipment no closer than 50 feet of a manatee. Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment. Activities will not resume until the manatee(s) has departed the project area of its own volition.
6. Any collision with and/or injury to a manatee shall be reported immediately to the "Manatee Hotline" at 1-888-404-FWCC (1-888-404-3922). Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Vero Beach (1-561-562-3909) in south Florida.
7. Temporary signs concerning manatees shall be posted prior to and during construction/dredging activities. All signs are to be removed by the lessee/grantee upon completion of the project. A sign measuring at least 3 feet by 4 feet which reads *Caution: Manatee Area* will be posted in a location prominently visible to water related construction crews. A second sign should be posted if vessels are associated with the construction, and should be placed visible to the vessel operator. The second sign should be at least 8 1/2 inches by 11 inches which reads:

Caution: Manatee Habitat. Idle speed is required if operating a vessel in the construction area. All equipment must be shutdown if a manatee comes within 50 feet of the operation. A collision with and/or injury to a manatee shall be reported immediately to the Florida Marine Patrol at 1-888-404-FWCC (1-888-404-3922) and the U.S. Fish and Wildlife Service at (1-561-562-3909) for south Florida.

TRAKKER

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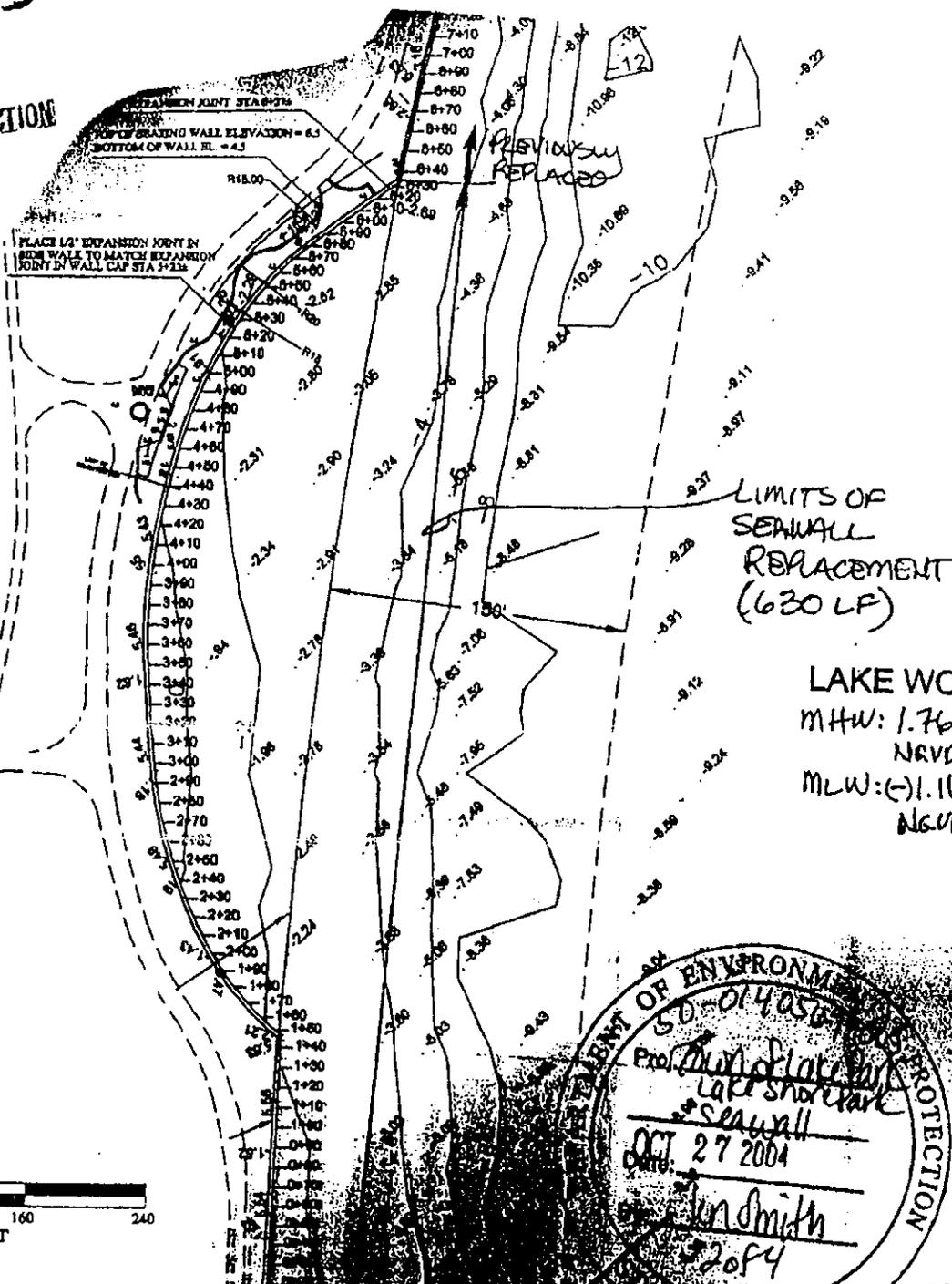
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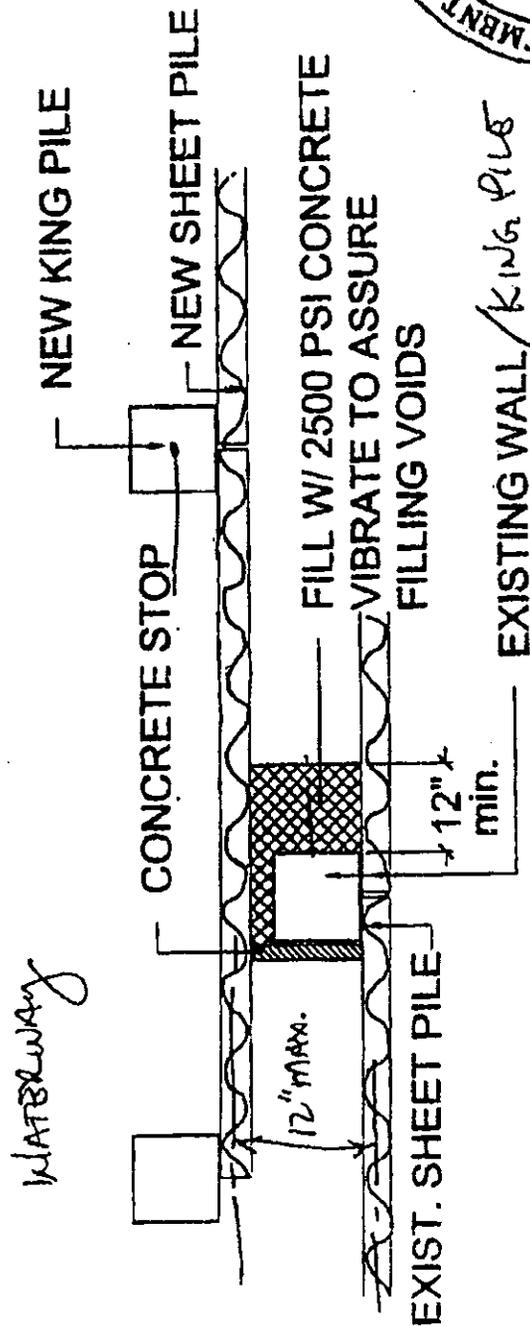
8

RECEIVED

OCT 05 2004

DEPT. OF ENV. PROTECTION





LAND/PARK SITE

**DETAIL TO END NEW CONSTRUCTION
TIE INTO EXISTING WALL**

STA 4+40±
STA 6+50±



Calvin, Giordano & Associates, Inc.
Engineers • Surveyors • Planners

1800 Eller Drive, Suite 600
Fort Lauderdale, Florida 33316
Phone: 954.921.7781
Fax: 954.921.8807

560 Village Boulevard, Suite 340
West Palm Beach, Florida 33409
Phone: 561.684.6161
Fax: 561.684.6360

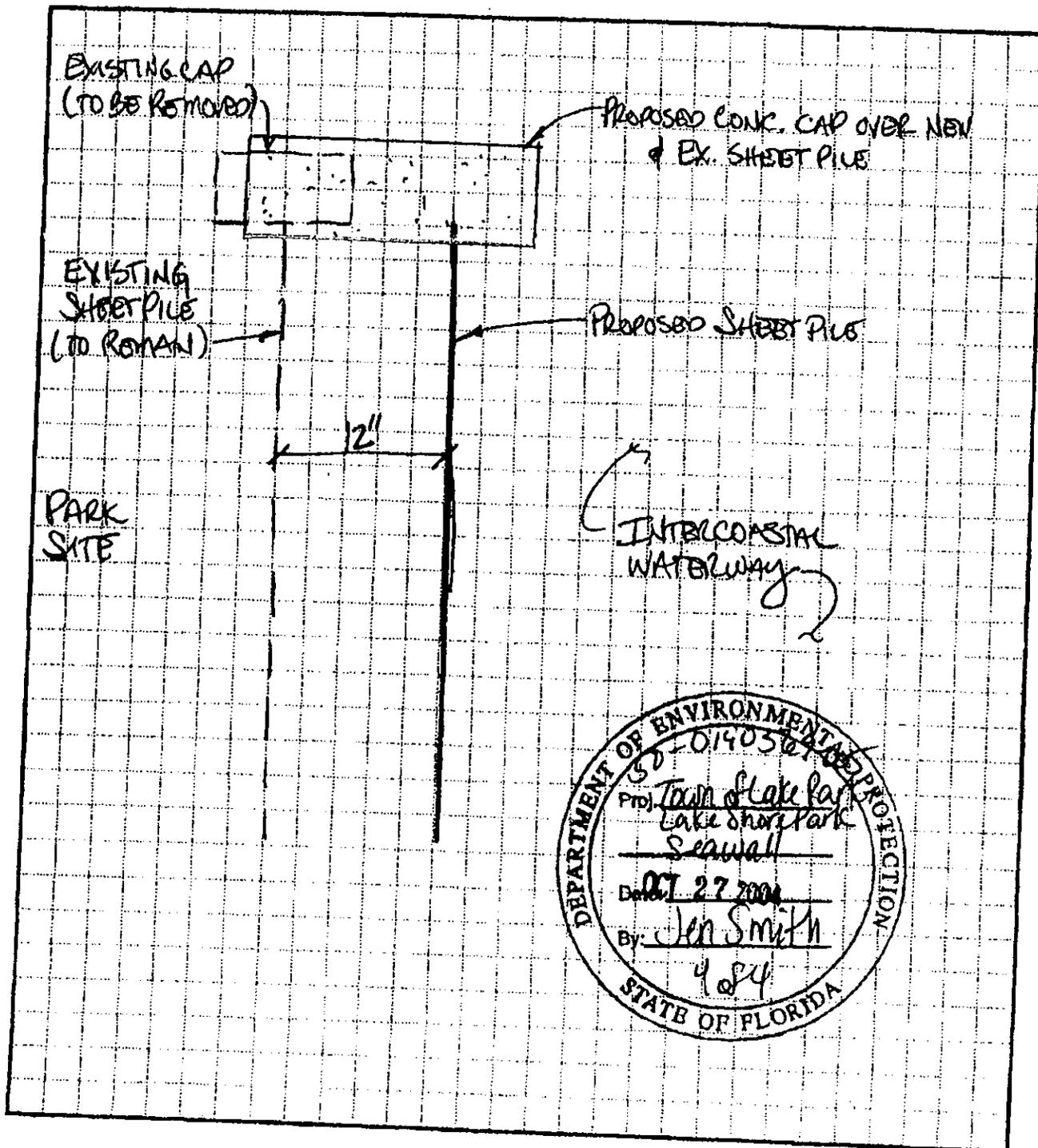
JOB LAKE PARK MARINA

SHEET NO. 1 OF 1

CALCULATED BY _____ DATE _____

CHECKED BY JCR DATE _____

SCALE _____



May 24 2005 10:06AM

Last Transaction

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
May 24	10:01AM	Fax Sent	7091#999999#19549218	5:10	14	OK



Calvin, Giordano & Associates, Inc.
Engineers • Surveyors • Planners

1800 ELLER DRIVE,
SUITE 500
FORT LAUDERDALE,
FLORIDA 33316
PHONE: 954 921 7781
FAX: 954 921 8607

560 VILLAGE BOULEVARD,
SUITE 340
WEST PALM BEACH,
FLORIDA 33409
PHONE: 561 684 6161
FAX: 561 684 6360

Facsimile

TO: <i>Bill Hase</i>	DATE: <i>May 21, 2005</i>
FAX NO: <i>954-921-8807</i>	
FROM: <i>Patricia</i>	NO. PAGES (Including Cover): <i>1/1</i>
RE:	
CC:	PROJECT NO.: <i>02 2748-72</i>

Hard copy follows by: Mail FedEx Courier No hard copy

Urgent For Review Please Comment Please Reply

Robert Cutcher

From: Patrick Figurella [pfigurella@calvin-giordano.com]
Sent: Friday, February 08, 2008 11:12 AM
To: John Downes; Robert Cutcher
Cc: Maria Davis; Robert Berry
Subject: RE: Exemption Letter for Lake Park Seawall

Robert, John is correct. Jennifer sent us this email in June of last year regarding the Letter of Exemption. This should be useful when you contact her.

From: Smith, Jennifer K. [mailto:Jennifer.K.Smith@dep.state.fl.us]
Sent: Tuesday, June 05, 2007 11:57 AM
To: Luis Ponce
Subject: Town of Lakeshore Park 50-0140569-005

Mr. Ponce,

This email is to verify that the exemption letter dated October 27, 2004, for the above referenced file is still valid as the rules regulating this activity have not changed. The activity to replace the seawall within one-foot waterward of the existing is still exempt from the need to obtain a DEP environmental resource permit in accordance with Section 40E-4.014(4)(b), F.A.C. and therefore does not require any further authorization from the Department.

This email does not relieve you from the responsibility to obtain any other (local or federal) authorizations.

If you have any questions regarding this email please contact me at the number below.

Sincerely,

patrick.a.figurella@calvin-giordano.com

305.944.1111

Environmental Services

Submerged Aquatic Vegetation and Wetland Remediation Unit

Department of Environmental Protection

1900 Boyd Street, Suite 100

West Palm Beach, FL 33411

http://www.dep.state.fl.us

PATRICK A. FIGURELLA, P.E.
Director of Engineering

2/8/2008

Engineering (Palm Beach)

From: John Downes
Sent: Friday, February 08, 2008 11:01 AM
To: 'Robert Cutcher'; Patrick Figurella
Cc: 'Maria Davis'; 'Robert Berry'
Subject: RE: Exemption Letter for Lake Park Seawall

We took care of this. You are getting another e-mail which you previously received.

From: Robert Cutcher [mailto:depth@gate.net]
Sent: Friday, February 08, 2008 10:58 AM
To: Patrick Figurella
Cc: John Downes; 'Maria Davis'; 'Robert Berry'
Subject: RE: Exemption Letter for Lake Park Seawall

To All

Please note that the FDEP Letter of Exemption No. 50-0140569-005 for the Lake Park replacement seawall expired on June 17th 2005. I am contacting Jennifer Smith, ERP Program Administrator to request a re-issue or conversely to submit a new application (part A). In either case, we can expect authorization within 35 days. I will provide an update as soon as I have a response from Jennifer. If you have any questions, please feel free to contact me.

Robert

From: Patrick Figurella [mailto:pfigurella@calvin-giordano.com]
Sent: Friday, February 08, 2008 8:14 AM
To: Robert Cutcher
Subject: Exemption Letter for Lake Park Seawall

Robert, here it is.

PATRICK A. FIGURELLA, P.E.
Director of Engineering
Engineering (Palm Beach)



Broward
phone: 954.921.7781
fax: 954.921.8807

West Palm Beach
phone: 561.684.6161
fax: 561.684.6360

Orlando
phone: 407.423.0523
fax: 407.926.7761

This transmission may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or use of the information contained herein (including any reliance thereon) is

2/8/2008

TAB 7

**Town of Lake Park Town Commission
Agenda Request Form**

Meeting Date: March 12, 2008

Agenda Item No. Tab?

- PUBLIC HEARING**
- Ordinance on Second Reading
- Public Hearing
- Quasi-Judicial Hearing**
- ORDINANCE ON FIRST READING

- RESOLUTION**
- DISCUSSION
- BID/RFP AWARD

GENERAL APPROVAL OF ITEM

CONSENT AGENDA

Other:

SUBJECT: A request submitted by William R. Upthegrove ("Applicant"), agent for the property owner, Twiggs Learning Tree Child Care, Inc., ("Owner") for approval of a Site Plan to convert a single-story, four-plex structure for use as 3,168 square foot child care facility, located on a 0.601 acre parcel, at the northeast corner of Silver Beach Road and 10th Street, within the Town of Lake Park's R-2 Zoning District.

RECOMMENDED MOTION/ACTION: Motion to approve a Site Plan for a 3,168 square foot day care center (with conditions) and Resolution.

Approved by Town Manager *W.A. Davis*

Date: 3/4/08

Originating Department: Community Development	Costs: \$ N/A Funding Source: Acct. #	Attachments:
Department Review: <input checked="" type="checkbox"/> Town Attorney KER 030308 <input type="checkbox"/> Community Affairs _____ <input checked="" type="checkbox"/> Community Development _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
Advertised: Date: _____ Paper: _____ <input type="checkbox"/> 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: The proposed site plan was initially submitted to the Town for review in February 2006, but the Project was delayed for several years because a Comprehensive Plan amendment was required to change the future land use designation of the property. The Owner recently obtained the necessary Comprehensive Plan amendment, and is requesting site plan approval to modify the exterior features of an existing single-story, four-plex and convert the building for use as a child care facility. The Planning and Zoning Board reviewed the Site Plan on February 4, 2008 and unanimously recommended approval. Town Staff also recommends approval of the Site Plan subject to certain conditions of approval. See staff report for further information.



"Jewel" of the Palm Beaches

**TOWN OF LAKE PARK
TOWN COMMISSION**
Meeting Date: March 12, 2008
Date Prepared: March 3, 2008

PLAN DESCRIPTION: Approval of a proposed Site Plan for a 3,168 sf day/child care facility.

APPLICANT'S REQUEST: A request by William R. Upthegrove ("Applicant"), agent for the property owner, Twiggs Learning Tree Child Care, Inc., ("Owner") for approval of a Site Plan for a new 3,168 sf day/child care facility ("Project") to be located on a 0.601 acre parcel at the northeast corner of Silver Beach Road and 10th Street ("Site" or "Property"), in the Town of Lake Park's R-2 zoning district, with an underlying Commercial land use designation.

STAFF RECOMMENDATION: **APPROVAL** subject to the conditions of approval as stated herein, and any additional conditions of approval which may be added through the Planning & Zoning review process.

P&Z BOARD RECOMMENDATION: **APPROVAL** subject to the conditions of approval as stated herein.

BACKGROUND INFORMATION:

Applicant(s): William R. Upthegrove
 Owner: Twiggs Learning Tree Child Care, Inc.
 Address of Location: NE Corner of Silver Beach Road and 10th Street, within the R-2 zoning district
 Lot Size: 0.601 acre
 Zoning and Land Use: R-2 / Commercial

Adjacent Zoning

North: R-2
 South: City of Riviera Beach
 East: R-2
 West: C-2

Adjacent Land Uses

North: Residential Medium Density
 South: City of Riviera Beach

East: Residential Medium Density
West: Commercial

CONSISTENCY WITH THE COMPREHENSIVE PLAN

The proposed Site Plan is consistent with the overall intent of the goals, objectives and policies of the Town's Comprehensive Plan. The following policies indicate the consistency between the Comprehensive Plan and the proposed Project:

Future Land Use Element

Objective 1: Future growth and development shall be managed through the preparation, adoption, implementation and enforcement of land regulations which: (3) encourage redevelopment, renewal or renovation, where and when necessary; and (4) discourage the proliferation of urban sprawl.

The Site Plan is for 3,168 sf to be used for a day/child care facility, located on a 0.601 acre parcel on the northeast corner of Silver Beach Road and 10th Street, within the Town's R-2 Zoning District.

Policy 1.4: Land development regulations adopted to implement this Comprehensive Plan shall be based on and be consistent with the following standards for commercial land use intensities as indicated below:

- a. Location shall be in accordance with the Future Land Use Map.
- f. Adequate off-street parking and loading facilities shall be provided.

The Property has a Commercial land use designation. The proposed day/child care use for is therefore consistent with the policy. The Site Plan also provides for more parking than is required by Code, and satisfies the minimum parking requirements.

Objective 2 Policy 2.1: The owner of any site shall be responsible for the on-site management of stormwater runoff in a manner so that post-development runoff rates, volumes and pollutant loads do not exceed those prescribed by the South Florida Water Management District.

The Application is consistent with the Policy. The Application has been reviewed by the Town Engineer, and is found to be in compliance with the stormwater requirements of the District.

Objective 3. All development orders and permits for future development and redevelopment activities shall be issued only if public facilities necessary to meet level of service standards are available concurrent with the impacts of the development.

The Application is consistent with the Policy. The appropriate sign offs have been obtained and are included in the Application packet.

4.0 Traffic Circulation

Policy 2.2: The Town shall review all the proposed development and coordinate and cooperate with the responsible agencies for these improvements to bring them into compliance with the level of service (“LOS”) standards.

The Applicant has provided the Town with documentation from Palm Beach County confirming that the proposed 3,168 square foot day/child care facility will satisfy the Traffic Performance Standards (“TPS”) and meets traffic concurrency requirements. If the the project is not completed by December 31, 2007, an updated concurrency letter must be submitted by the Applicant/Owner to the Town.

6.0 Sanitary Sewer, Solid Waste, Drainage, Potable Water and Natural Groundwater Aquifer Recharge

6.62 Objective 1. The Town shall ensure through the land development approval process that, at the time a building permit is issued adequate public facility capacity is available or will be available at the time of occupancy.

The Town believes there will be adequate public facility capacity at the time of occupancy.

8.0 Conservation

Objective 1: Protect air quality within the Town of Lake Park

Policy 1.1: Construction practices such as seeding, wetting, and mulching which minimize airborne dust and particulate emission generated by construction activities shall be undertaken within 30 days of completion of clearing work.

The Site Plan will be consistent with the Policy as long the building permit is conditioned on the requirement that the developer minimize airborne dust and particulate emission on the site.

Objective 3: Conserve potable water supplies

The Application is consistent with the objective. Florida Building Code specifies water conservation fixtures, which will be implemented on Site.

PROJECT DETAILS:

Building Site: The Site is located in the R-2 Zoning District with a commercial land use which is suitable for a 3,168 sf day/child care use that has been proposed.

Site Access: The day/child care facility is located on a 0.601 acre parcel on the NE corner of Silver Beach Road and 10th Street. Site access is off of Silver Beach Road.

Traffic: Confirmation from Palm Beach County Traffic has been received by the Town. The proposed 3,168 square foot day/child care facility has satisfied Traffic Performance Standards (TPS) and meets traffic concurrency requirements. If the Project is not completed by December 31, 2008, an updated concurrency letter must be provided by the Applicant/Owner to the Town.

Landscaping: The Applicant is providing appropriate landscaping for the Site, and is in compliance with the minimum landscape requirements of the Code. All perimeter buffering is provided as required by the Code.

Drainage: The Applicant has provided conceptual engineering to the Town, and has been notified that prior to the issuance of a building permit, the Applicant must provide copies of all required agency permits, including but not limited to, permits from the South Florida Water Management District. The Town's civil engineer for this Project has reviewed and approved all engineering plans and all Florida Building Code requirements.

Parking: The Applicant exceeds the Code requirements for parking spaces. The Code requires one (1) space per 250 sf, plus five (5) additional visitor parking spaces, for a total of 18 required spaces. The Applicant is providing 20 spaces (inclusive of 1 handicap space).

Signage: The Applicant has satisfied the necessary signage requirements for the Site.

Zoning: The zoning for the Site is R-2. The land use designation is Commercial.

Water/Sewer: The Town's civil engineer for this Project has reviewed and ascertained that there is sufficient available capacity to sustain the levels of service for potable water and for wastewater treatment set forth in the Town's Comprehensive Plan.

Design: Plans for this Project were initially submitted to the Town for review in February 2006, however the Project delayed for several years. The Applicant just recently received approval for a land use change and is proceeding with the Project. The Applicant is not proposing to tear down the existing building, only to modify the exterior features of the four-plex, single-story structure. Staff believes that the design of the Project will remain consistent with the remainder of the property and that it is sufficient.

STAFF COMMENTS:

Staff recommends **APPROVAL** of the Site Plan (as revised), subject to the following conditions.

1. Construction shall be allowed only between the hours of 7:00 a.m. and 7:00 p.m. unless otherwise approved by the Community Development Director.

2. Any disturbance of the public right of way along Silver Beach Road or 10th Street shall require review and written approval from the Director of the Town's Public Works Department prior to any construction.
3. Any disruption to any of the nearby entrance/exit and parking areas along Silver Beach Road shall require prior written approval by the Town's Community Development Director.
4. The contractor shall employ commonly accepted practices that ensures the safety and well being of the general public.
5. All approved landscaping shall be properly maintained. There shall be a minimum three-month replacement guarantee provided by the Owner commencing at the time of issuance of the Certificate of Occupancy. The Owner shall be responsible to replace any and all dead or dying landscape materials required by the approved Site Plan and/or the Town Code.
6. Safe and adequate pedestrian passage in front of the construction site along Silver Beach Road and 10th Street shall be maintained at all times.
7. The Owner shall ensure that the contractor uses commonly accepted practices to reduce airborne dust and particulates during the construction phase.
8. All dumpsters shall be enclosed as noted on the Site Plan and enclosure doors kept shut at all times. All dumpsters shall be acquired from the approved franchise supplier for the Town of Lake Park.
9. Prior to issuance of the Certificate of Occupancy, the Owner and/or the Applicant shall provide certification from the landscape architect of record that the plant installations on Site are in accordance with the Plans approved by the Town Commission.
10. Prior to the issuance of any building permit, copies of all other required permits from other agencies including but not limited to Palm Beach County Health Department, Palm Beach County Land Development Division, South Florida Water Management Division and the State of Florida Department of Environmental Protection will be provided by the Owner and/or Applicant to the Town's Community Development Department.
11. The Applicant must provide documentation to the Town's Community Development Department from Palm Beach County that the proposed 3,168 SF day/child care facility satisfies Traffic Performance Standards (TPS) and meets traffic concurrency requirements by the 2009 build out date.
12. The Project shall be constructed in compliance with the following plans on file with the Town's Community Development Department or authorized revisions as noted below:
 - a. Site Plan & Architectural Elevations referenced as sheet 1, 2 and 7 respectively, dated 01-02-08 by William Rillon Upthegrove, Project architect and planner of record, received and dated by the Department of Community Development on 01-11-08.
 - b. Engineering Plans, referenced as sheets 1 and 2 dated 01-02-08 prepared by Dixon & Associates Engineers, Inc., Project engineer of record, received and dated by the Department of Community Development on 01-11-08.

- c. Landscape plans referenced as sheets LP-1 and LP-2 dated 01-02-08 and prepared by Howard S. Ostrout Jr., and Associates, LLC, Project landscape architect of record, received and dated by the Department of Community Development on 01-11-08.
 - d. Irrigation plan referenced as sheet LP-1 dated 01-02-08, prepared by Howard S. Ostrout Jr., and Associates, LLC, received and dated by the Department of Community Development on 01-11-08.
13. Any revisions to the approved Site Plan, landscape plan, architectural elevations, signs, statement of use, or other detail submitted as part of the Application, including, but not limited to, the location of the proposed improvements or additional, revised, or deleted colors, materials, or structures, shall be submitted to the Community Development Department, and shall be subject to its review and approval, unless the Town Code or a condition of approval requires Town Commission approval.
 14. The Owner of record or the Owner's authorized agent shall initiate the bona fide and continuous development of the property within 18 months from the effective date of the development approval. The development shall be completed within 18 months from the effective date of initiation of development unless an extension of time is granted and as more specifically provided for in the Town of Lake Park Code of Ordinances, Section 67-42, "*Expiration of development approvals*".
 15. Cost Recovery. All fees and costs incurred by the Town in reviewing the Project and billed to the Owner shall be paid to the Town within 10 days of receipt of an invoice from the Town. The failure of an Owner to reimburse the Town for all fees and costs invoiced within 10 days may result in the revocation of one or more development order approvals.
 16. Additional lighting fixtures shall be added in playground and parking areas and submitted in an updated photometric plan.

RESOLUTION NO. 17-03- 08

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, APPROVING A SITE PLAN FOR THE CONSTRUCTION OF A 3,168 SQUARE FOOT CHILD DAY CARE FACILITY SUBJECT TO CONDITIONS OF APPROVAL, TO BE LOCATED ON AN 0.601 ACRE OF PROPERTY, OWNED BY TWIGGS LEARNING TREE CHILD CARE, INC., AND LOCATED ON THE NORTHEAST CORNER OF SILVER BEACH ROAD AND 10TH STREET IN THE TOWN OF LAKE PARK, FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Twiggs Learning Tree Child Care, Inc., a Florida corporation is the owner (“Owner”) of a 0.601 acre of real property located on the Northeast Corner of Silver Beach Road and 10th Street (“property”) in the Town of Lake Park, Florida in the Town’s R-2 Zoning District; and

WHEREAS, William R. Upthegrove (“Applicant”) has filed an application for approval of a site plan (the “Application”) which would authorize the renovation of an existing four-plex building on the property for a 3,168 square foot child day care facility; and

WHEREAS, the legal description of the property is contained in **Exhibit “A”** and its general location is shown on **Exhibit “B”** both of which are attached hereto and incorporated herein; and

WHEREAS, Town staff and the Lake Park Planning and Zoning Board have reviewed the proposed Site Plan and the Application and have made their respective recommendations on the Application to the Town Commission; and

WHEREAS, the Town Commission has considered the evidence presented to it by the Town Staff, the Lake Park Planning and Zoning Board, the Owner, the Applicant, and other interested parties and members of the public, regarding the Application’s consistency with the Town’s Comprehensive Plan, and whether it meets the Town’s Land Development Regulations; and

WHEREAS, the Town Commission has determined that certain conditions as set forth herein, are necessary for the Application to be consistent with the Town’s Comprehensive Plan and to meet the Town’s Land Development Regulations; and

WHEREAS, the Owner, the Applicant and their successors and assigns shall be subject to the conditions contained in Section 2.

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

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

Section 2: The Town Commission hereby approves the Site Plan for a 3,168 square foot child day care facility as requested in the Application, including, but not limited to, the submitted architectural elevations for the property and engineering design, subject to the following conditions:

CONDITIONS OF SITE PLAN APPROVAL:

1. Construction shall be allowed only between the hours of 7:00 a.m. and 7:00 p.m. unless otherwise approved in writing by the Community Development Director.
2. Any disturbance of the public right of way along Silver Beach Road or 10th Street shall require review and written approval from the Director of the Town's Public Works Department prior to any construction.
3. Any disruption to any of the nearby entrance/exit and parking areas along Silver Beach Road shall require prior written approval by the Town's Community Development Director.
4. The Owner shall ensure that all contractors employ commonly accepted practices that ensures the safety and well being of the general public.
5. All approved landscaping shall be properly maintained. The Owner shall guarantee the replacement of all plant and vegetative landscaping materials for not less than three-months commencing at the time of issuance of the Certificate of Occupancy. The Owner shall be responsible for the replacement of any and all dead or dying landscape materials required by the approved Site Plan and/or the Town Code.
6. Safe and adequate pedestrian passage in front of the construction site along Silver Beach Road and 10th Street shall be maintained at all times.
7. The Owner shall ensure that all contractor use commonly accepted practices to reduce airborne dust and particulates during the construction phase.
8. All dumpsters shall be enclosed as noted on the Site Plan and enclosure doors kept shut at all times. All dumpsters shall be acquired from the approved franchise supplier for the Town of Lake Park.
9. Prior to issuance of the Certificate of Occupancy, the Owner and/or the Applicant shall provide certification from the landscape architect of record that the plant installations on Site are in accordance with the Plans approved by the Town Commission.
10. Prior to the issuance of any building permit, copies of all other required permits from other agencies including but not limited to Palm Beach County Health Department, Palm Beach County Land Development Division, South Florida Water Management Division and the State of Florida Department of Environmental Protection, shall be provided by the Owner and/or Applicant to the Town's Community Development Department.
11. The Owner and/or Applicant must provide documentation to the Town's Community Development Department from Palm Beach County that the proposed 3,168 SF child day care facility satisfies Traffic Performance Standards ("TPS"), and meets traffic concurrency requirements by the 2009 build out date.
12. The Project shall be constructed in compliance with the following plans ("Plans") on file with the Town's Community Development Department or authorized revisions as noted below:
 - a. Site Plan & Architectural Elevations referenced as sheet 1, 2 and 7 respectively, dated 01-02-08 by William Rillon Upthegrove, Project architect and planner of record, received and dated by the Town's Department of Community Development on 01-11-08.

- b. Engineering Plans, referenced as sheets 1 and 2 dated 01-02-08 prepared by Dixon & Associates Engineers, Inc., Project engineer of record, received and dated by the Town's Department of Community Development on 01-11-08.
 - c. Landscape plans referenced as sheets LP-1 and LP-2 dated 01-02-08 and prepared by Howard S. Ostrout Jr., and Associates, LLC, Project landscape architect of record, received and dated by the Town's Department of Community Development on 01-11-08.
 - d. Irrigation plan referenced as sheet LP-1 dated 01-02-08, prepared by Howard S. Ostrout Jr., and Associates, LLC, received and dated by the Town's Department of Community Development on 01-11-08.
- 13. Any revisions to the foregoing Plans, including but not limited to, the approved Site Plan, landscape plan, architectural elevations, signs, statement of use, or other detail submitted as part of the Application, including, but not limited to, the location of the proposed improvements or additional, revised, or deleted colors, materials, or structures, shall be submitted to the Town's Community Development Department, and shall be subject to its review and approval, unless the Town Code or a condition of approval requires Town Commission approval.
 - 14. The Owner of record or the Owner's authorized agent shall initiate the bona fide and continuous development of the property within 18 months from the effective date of the development approval. The development shall be completed within 18 months from the effective date of initiation of development unless an extension of time is granted and as more specifically provided for in the Town of Lake Park Code of Ordinances, Section 67-42, "*Expiration of development approvals*".
 - 15. Cost Recovery. All fees and costs incurred by the Town in reviewing the Project and billed to the Owner shall be paid to the Town within 10 days of receipt of an invoice from the Town. The failure of an Owner to reimburse the Town for all fees and costs invoiced within 10 days, may result in the revocation of one or more development order approvals.
 - 16. Any violations of the conditions of this Site Plan approval may be enforced by the Town through code enforcement proceedings to achieve compliance or any other legal or equitable means available to the Town.
 - 17. Additional lighting fixtures shall be added in playground and parking areas and submitted in an updated photometric plan.

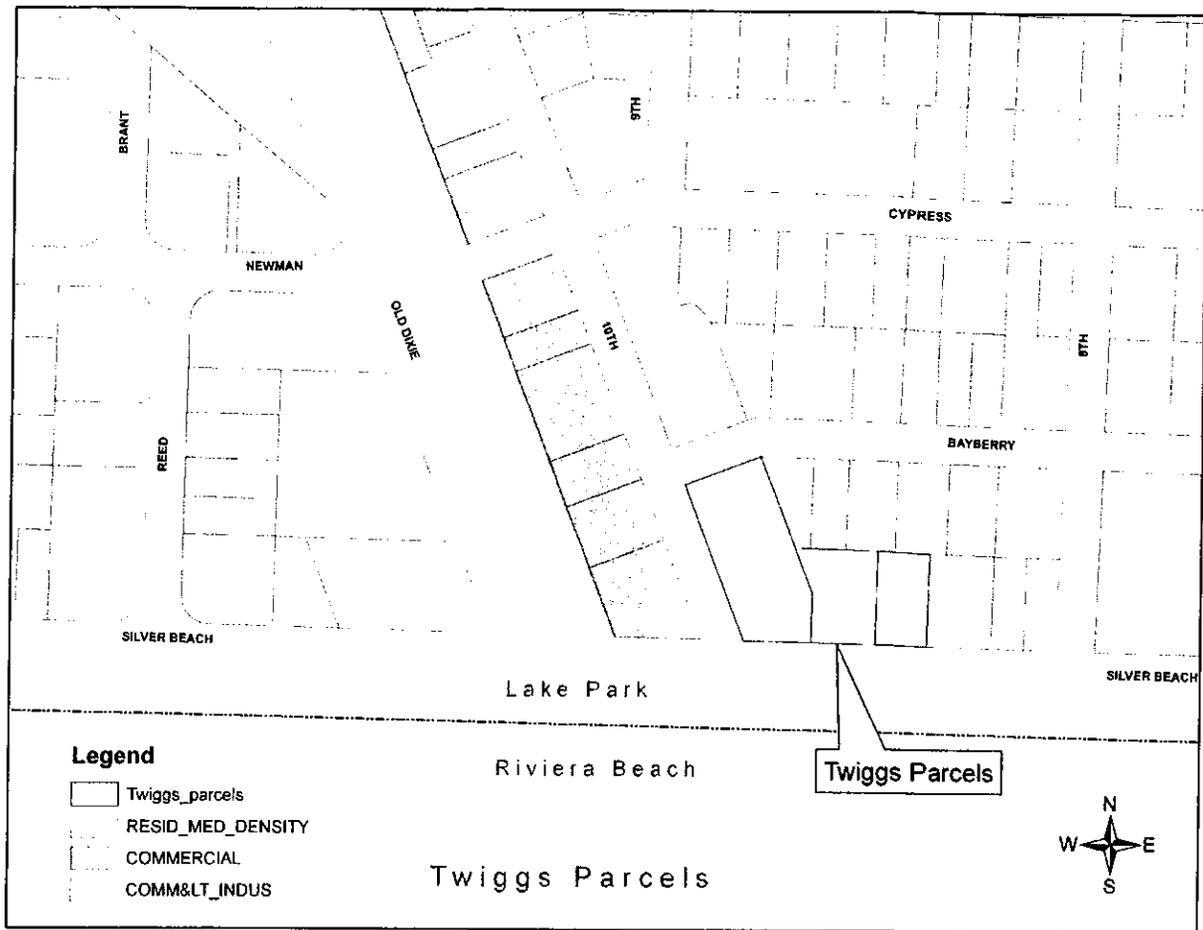
Section 3: This Resolution shall become effective upon adoption.

EXHIBIT A – LEGAL DESCRIPTION:

Twiggs Learning Tree Child Care & Kindergarten, Inc.

LOTS 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, AND 32, BLOCK 48, TOWN OF LAKE PARK (FORMERLY KELSEY CITY), FLORIDA, ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, AT PLAT BOOK 8, PAGE 27.

EXHIBIT B – LOCATION MAP



THE TOWN OF LAKE PARK
APPLICATION FOR SITE PLAN REVIEW

RECEIVED
MAR 13 2006
BY:

Name of Applicant: WILLIAM R. UPTHEGROVE, ARCH.

Address: 704 SUMMERWINDS LN., JUPITER, FL. 33450

Telephone: 561/747-5880

Owner's Name (if not applicant) TWIGGS LEARNING TREE
CHILD CARE, INC

Address: 101 10th ST., LAKE PARK, FL. 33403

Telephone: 561/842-4669

Property Location:

N. SIDE SILVER BEACH RD (NO. 814) 2ND LOT FROM
10TH ST.

Legal Description:

LOTS 27, 28, 29, 30, 31, 32, BLOCK 48, TOWN OF
LAKE PARK

Property I.D. Number: _____ Acreage/Square Footage: .601 ACRES
26,169 SQ. FT.

Nearest Street Location:

SILVER BEACH RD

Zoning District

R-2

Describe purpose of submittal:

CONVERSION OF EXISTING FOUR PLEX RESIDENTIAL
TO CHILD CARE FACILITY

I hereby certify that I am (we are) owner(s) of record of the above described property or that I (we) have written permission from the owner(s) of record to request this action.

2/27/06
Date

William R. Uptegrove
Signature of Owner/
Applicant

Drive In/Carry Out (gross square feet) _____

Institutions (# of meals/ # of seats) _____

D. Doctor or Dentist

(# of practitioners) _____

(# of employees per practitioner) _____

(# of employees per 8 hour shift) _____

E. Shopping Centers/Retail Stores/Service Businesses without food or laundry (gross square feet) _____

F. Schools, Day Care Centers or Nurseries (# of students, faculty, and staff) _____

62 STUDENTS, 8 FACULTY / STAFF

Showers (Yes No) Cafeteria (Yes No)

G. Office Building (gross square feet) _____

H. Irrigation (gross square feet) _____

I. Air Conditioning Water Cooling Towers (rating in tons) _____

J. Other (Please include detailed use and project size, i.e. # beds, square feet, # students, etc., and type of business) _____

9. Date you are anticipating start of project _____ **UPON APPROVAL OF SITE PLAN & ISSUANCE OF BLDG. PERMIT**

10. Will project be phased? • Yes • No

If phased, how many are anticipated and dates of each phase. **N.A.**

11. Give name, address, phone number of the Developer and name and title of the person who will be authorized to execute the Developer Agreement.

N.A.

12. Entity under which Developer Agreement will be drawn up. **N.A.**

Give name, address, phone and facsimile number of individual to whom all correspondence, etc. concerning this project should be sent.

Name: WILLIAM R. UPTHEGROVE, ARCHITECT

Address: 704 SUMMERWINDS LN., JUPITER, FL 33458

Phone: 561/747-5800 Fax: 561/744-6316

Email Address: -

ALL REQUESTS SUBMITTED MUST CONTAIN COMPLETED PROPERTY QUESTIONNAIRE, SURVEY AND AUTHORIZATION LETTER FROM FEE SIMPLE TITLE HOLDER, IF APPLICABLE.

DO NOT begin civil engineering work until a preliminary engineering meeting is held with Seacoast staff.

After the above information is reviewed, you will be contacted if further information is needed to complete your request.

I hereby affirm that I am either the property owner or the authorized agent of the property owner and that the information provided herein is true and correct to the best of my knowledge and belief.

Date: 1/6/06

Applicant's Signature William R. Uptegrove

STATE OF Florida
COUNTY OF Palm Beach Cty

The foregoing instrument was acknowledged before me this 6th day of January, 2006 by William R. Uptegrove who is personally known to me or who has produced Florida Driver License as identification and who did take an oath.

Eunice L. Twiggs
Notary Signature

Eunice L. Twiggs
Print Name
Notary Public - State of Florida
Commission No: # DD467251
My Commission Expires: Sept. 23, 2009



Consent Form from Owner and Designation of Authorized Agent:

Before me, the undersigned authority, personally appeared **EDWARD TWIGGS** who, being by me first duly sworn, on oath deposed and says:

1. That he/she is the fee simple title owner of the property described in the attached Legal Description.
2. That he/she is requesting **SITE PLAN APPROVAL** in the Town of Lark Park, Florida.
3. That he/she has appointed **WILLIAM R. UPTHEGROVE** to act as authorized on his/her behalf to accomplish the above project.

Name of Owner: **TWIGGS LEARNING TREE CHILD CARE, INC**

Signature of Owner

101 10th ST.

Street Address

P.O. Box

561/842-4663

Telephone Number

Email Address

PRESIDENT
By: Name/Title

LAKE PARK, FL 33409

City, State, Zip code

City, State, Zip code

561/842-4779

Fax Number

Sworn and subscribed before me this **6th** day of **January**, **2006**.

Eunice Lavon Twigg
Notary Public

My Commission expires:

Sept. 23, 2009



Eunice Lavon Twigg
Commission # DD467251
Expires: SEP 23, 2009
www.AARONNOTARY.com

ESTABLISHED IN 1976

February 16, 2006
Revised: May 18, 2006

PRINCIPALS:

Joseph W. McMahon, P.E.
Rodney P. Plourde, Ph.D., P.E.
Joseph J. DeSantis, P.E., PTOE

Edward Twiggs
Twiggs Learning Tree Child Care Center, Inc.
c/o William Upthegrove
William Rillon Upthegrove Architect & Planner
704 Summerwinds Lane
Jupiter, FL 33458

**RE: Twiggs Learning Center – Traffic Impact Statement
McM Project No. M06045.11**

ASSOCIATES:

John S. DePalma
Casey A. Moore, P.E.
William T. Steffens
Gary R. McNaughton, P.E., PTOE
John J. Mitchell, P.E.
Christopher J. Williams, P.E.

Dear Mr. Upthegrove:

McMahon Associates, Inc. (McMahon) has prepared this Traffic Impact Statement for an institutional development that will include a 3,168 square foot day care facility. There are four (4) dwelling unit condos/townhomes and one (1) single-family home on the approximately 0.6 acre site. The site is located directly north of Silver Beach Road, and east of 10th Street, within in the Town of Lake Park. McMahon has prepared this Traffic Impact Statement, in accordance with the Palm Beach County Traffic Performance Standards (TPS), to present the traffic impacts of this project. This project is expected to be built out by the year 2007.

REGIONAL OFFICES:

Fort Washington, Pennsylvania
Exton, Pennsylvania
Mechanicsburg, Pennsylvania
Yardville, New Jersey
Palm Beach Gardens, Florida
Fort Lauderdale, Florida
Miami, Florida
Fort Myers, Florida
Boston, Massachusetts

This letter report includes trip generation tables showing the daily, the AM, and the PM peak hour trips. The number of net new peak hour trips generated by this project require that this statement include a roadway significance analysis major thoroughfare within a half-mile radius of the site. This traffic statement is being submitted in order for Palm Beach County and the Town of Lake Park to approve the site for the aforementioned land use and intensity.

Project Trip Generation

The daily and peak hour trip generation values for this statement were estimated using Palm Beach County approved trip generation rates. The daily, AM peak and PM peak hour trip generations are provided in **Table 1**. This development is expected to generate 134 daily, 14 AM peak hour, and 22 PM peak hour net new trips. The table also presents the net new vehicle trips generated by this project by subtracting the existing land uses that are being replaced by the proposed project.

WWW.MCMTRANS.COM

**TABLE 1
TRIP GENERATION ANALYSIS
TWIGGS LEARNING CENTER**

Daily (1)

Land Use	ITE Code	Intensity		Total Trips			Percent Pass-by	Pass-by Trips	Net New Trips			
				In	Out	Total			In	Out	Total	
Proposed												
Day Care (A)	565	3,168	SF	126	125	251	30%	75	88	88	176	
Existing												
Condo/Townhomes	230	4	DU	14	14	28	0%	0	14	14	28	
Single-Family	210	1	DU	5	5	10	0%	0	5	5	10	
Redevelopment Credit				2	2	4			2	2	4	
Net New Trips				105	104	209			67	67	134	

AM Adjacent Street Peak (2)

Land Use	ITE Code	Intensity		Total Trips			Percent Pass-by	Pass-by Trips	Net New Trips			
				In	Out	Total			In	Out	Total	
Proposed												
Day Care (A)	565	3,168	SF	22	19	41	30%	12	15	14	29	
Existing												
Condo/Townhomes	230	4	DU	1	3	4	0%	0	1	3	4	
Single-Family		1	DU	1	9	10	0%		1	9	10	
Redevelopment Credit				0	0	1			0	1	1	
Net New Trips				20	7	26			13	1	14	

PM Adjacent Street Peak (3)

Land Use	ITE Code	Intensity		Total Trips			Percent Pass-by	Pass-by Trips	Net New Trips			
				In	Out	Total			In	Out	Total	
Proposed												
Day Care (A)	565	3,168	SF	20	22	42	30%	13	14	15	29	
Existing												
Condo/Townhomes	230	4	DU	3	1	4	0%	0	3	1	4	
Single-Family	210	1	DU	1	1	2	0%		1	1	2	
Redevelopment Credit				0	0	1			0	0	1	
Net New Trips				16	20	35			10	13	22	

Trip generation source: Trip Generation Handbook, as follows:

A. Land use 565 (Day Care):

- Daily trip generation equation: $\ln(T)=79.26(X)$, with 30% pass-by trips
- AM peak hour trip generation equation: $T = 12.79(X)$, with 30% pass-by trips (In: 53%, Out: 47%)
- PM peak hour trip generation equation: $(T) = 13.18(X)$, with 30% pass-by trips (In: 47%, Out: 53%)

B. Land Use 230 (Condo):

- Daily trip generation equation: $\ln(T)=7(X)$, with 0% pass-by trips
- AM peak hour trip generation equation: $\ln(T) = 0.80 \ln(X)+0.26$, with 0% pass-by trips (In: 17%, Out: 83%)
- PM peak hour trip generation equation: $\ln(T) = 0.82 \ln(X)+32$, with 0% pass-by trips (In: 67%, Out: 33%)

B. Land Use 210 (Single-Family):

- Daily trip generation equation: $\ln(T)=10(X)$, with 0% pass-by trips
- AM peak hour trip generation equation: $(T) = 0.7 * (X) + 9.43$, with 0% pass-by trips (In: 25%, Out: 75%)
- PM peak hour trip generation equation: $\ln(T) = 0.90 * \ln(X) + 0.53$, with 0% pass-by trips (In: 63%, Out: 37%)

Significance Analysis

Traffic generated by the proposed project will enter and exit via one (1) driveway connection to Silver Beach Road. Project trips were distributed 50 percent to the west and 50 percent the east, based on the fact that there are two (2) major north/south roadways, Old Dixie Highway and US-1, located west and east of the site, respectively. **Table 2** shows the peak hour traffic assignment on the major access roads within a half-mile radius.

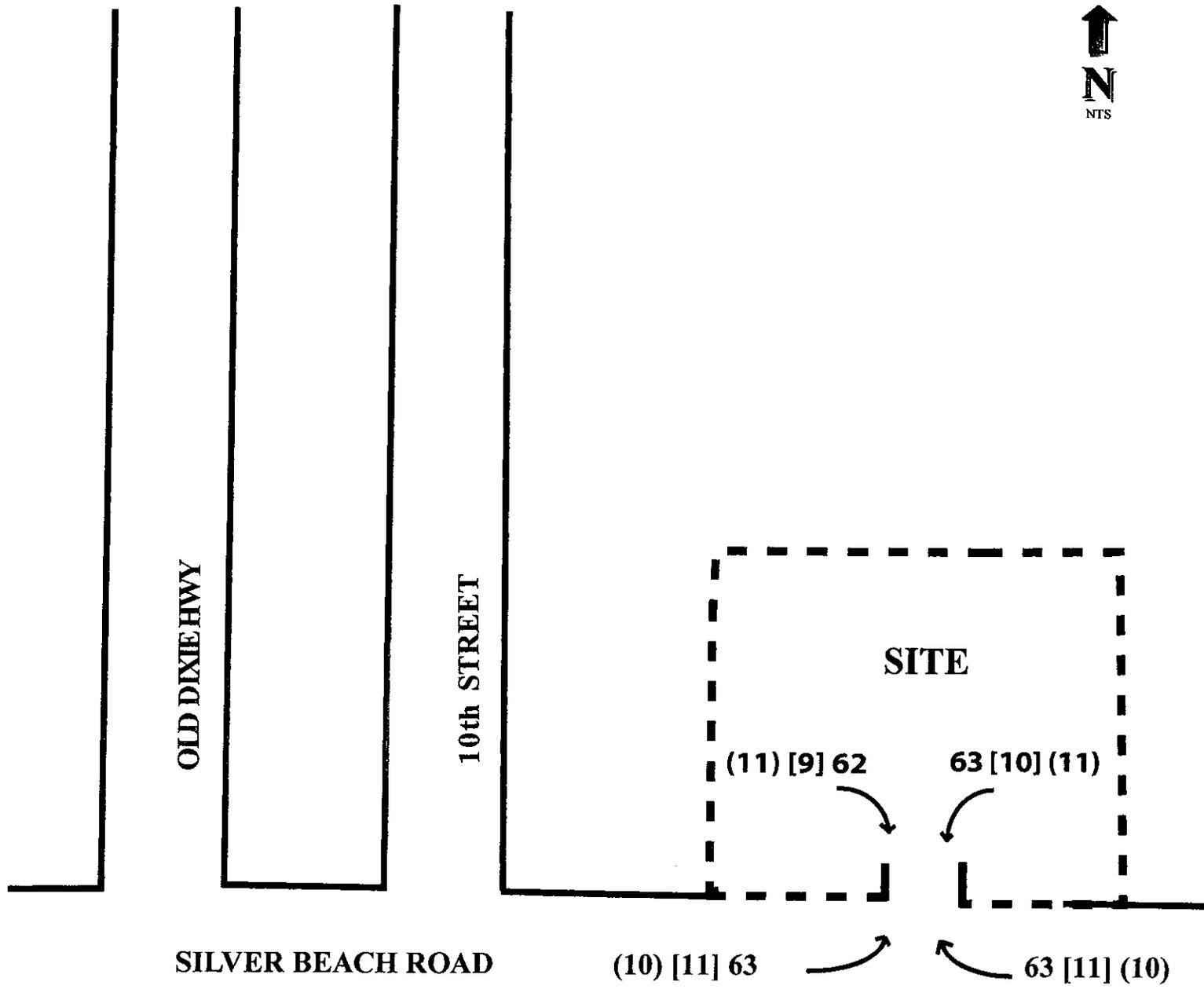
**TABLE 2
 PEAK HOUR SIGNIFICANCE ANALYSIS**

Roadway	From	To	Facility Type	LOS D Capacity Threshold	Percent Project Traffic Assigned	Project Traffic Assigned to Link	Percent Project Traffic to Capacity	Significant Impact
Silver Beach Rd	N Congress Ave	Old Dixie Hwy	4LD	1,170	20%	4	0.38%	No
	Old Dixie Hwy	Project Driveway	4LD	1,170	50%	11	0.94%	No
	Project Driveway	US-1	4LD	1,170	50%	11	0.94%	No
Old Dixie Hwy	Park Ave	Silver Beach Rd	4LD	3,110	15%	3	0.11%	No
	Silver Beach Rd	Blue Heron Blvd	4LD	3,110	15%	3	0.11%	No

To establish the relationship between site-generated traffic and Level of Service (LOS) D capacity of the surrounding roadway network, capacity thresholds were obtained from the Palm Beach County Traffic Division. The proposed peak hour traffic volumes were assigned to the area roadway system according to the aforementioned distribution, and were compared to the peak hour two-way LOS D capacity thresholds. The results of the analysis, shown in **Table 2**, indicate that the traffic impact of the proposed project on the impacted links will be less than one percent of the peak hour capacities of these roadways. This project, therefore, will not have a significant impact upon the surrounding roadway network and meets Palm Beach County TPS requirements.

Driveway Volumes

The project will have one driveway connection to Silver Beach Road that will replace the two (2) existing driveways. Driveway turning movement volumes were estimated based on the proposed project traffic distribution and the County in/out percentages. **Figure 1** presents the daily, AM peak hour, and PM peak hour turning movements estimated for the proposed development.



LEGEND
XXX WEEKDAY DAILY
[XX] WEEKDAY AM PEAK HOUR
(XX) WEEKDAY PM PEAK HOUR

Figure 1
Proposed Driveway Turning Movement Volumes
TWIGGS LEARNING TREE CHILD CARE

Mr. William Upthegrove
Revised: May 18, 2006
Page 5

Conclusion

McMahon has reviewed the potential traffic impacts associated with the development of a 3,168 square foot day care facility in accordance with Palm Beach County TPS. The proposed project will not have a significant impact on the surrounding roadway network. Therefore, this project meets the requirements of Palm Beach County TPS. McMahon recommends that the proposed development be approved.

Very truly yours,



John P. Kim, P.E., PTOE
Professional Engineer License No. 62400
State of Florida Board of Professional Engineers
Certificate of Authorization No. 4098

JPK/jmd
Attachment

TAB 8

**Town of Lake Park Town Commission
Agenda Request Form**

Meeting Date: March 12, 2008

Agenda Item No. Tab 8

- | | |
|--|---|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> RESOLUTION |
| <input type="checkbox"/> Ordinance on Second Reading | <input checked="" type="checkbox"/> DISCUSSION |
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> BID/RFP AWARD |
| <input type="checkbox"/> ORDINANCE ON FIRST READING | <input type="checkbox"/> CONSENT AGENDA |
| <input type="checkbox"/> GENERAL APPROVAL OF ITEM | |
| <input type="checkbox"/> Other: | |

SUBJECT: Patio Covering at the Marina

RECOMMENDED MOTION/ACTION: N/A

Approved by Town Manager *W. Davis* Date: 3/7/08

Name/Title

Date of Actual Submittal

Originating Department: Town Manager	Costs: \$ Funding Source: Acct. #	Attachments: Proposals
Department Review: <input type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
Advertised: Date: _____ Paper: _____ <input type="checkbox"/> 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: The Town Commission directed staff to explore options to cover the paver patio located on the east side of the Ship Store at the marina. Staff solicited quotes from contractors for various types of construction and mediums.

Hoa Hoang designed a concrete structure with a tile roof to match the existing building. He provided two options; one to cover the existing patio and one to provide cover adjacent to existing patio on the north side. Browning & Becker Construction, Inc. provided an estimate of \$115,038 or \$62.18 per square foot.

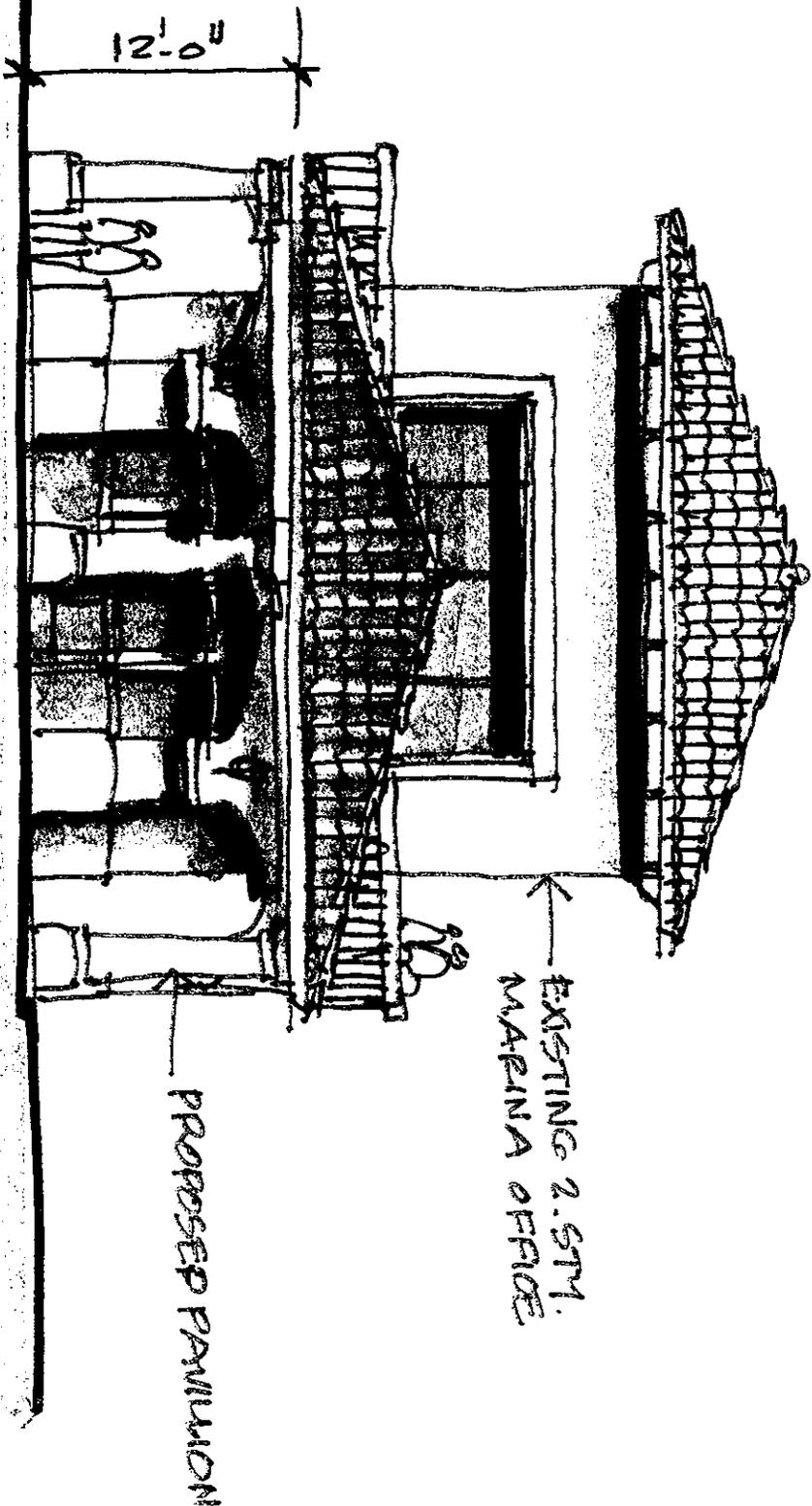
Staff solicited several proposals from **Tiki Hut** contractors as follows:

Tiki Huts by Vogell Marine, Inc.	\$95,265 or \$43.30 per square foot.
Jaw Construction, Inc.	\$82,024 or \$41.51 per square foot
Custom Tropical Tikis	\$30 per square foot.

Vinyl Patio Covering

Rainbow Canvas	\$37,000 or \$17.86 per foot.
----------------	-------------------------------

Given the current financial outlook of the Town and Marina, staff **does not recommend** incurring expenditures at this time.



PROPOSED MARINA PAVILION

EAST ELEVATION

1/8" = 1'-0" HOA

OPTION # 1

MARINA PAVILION
OPT. # 2 $\frac{1}{8}'' = 1'-0''$

EXISTING PATIO
TO REMAIN

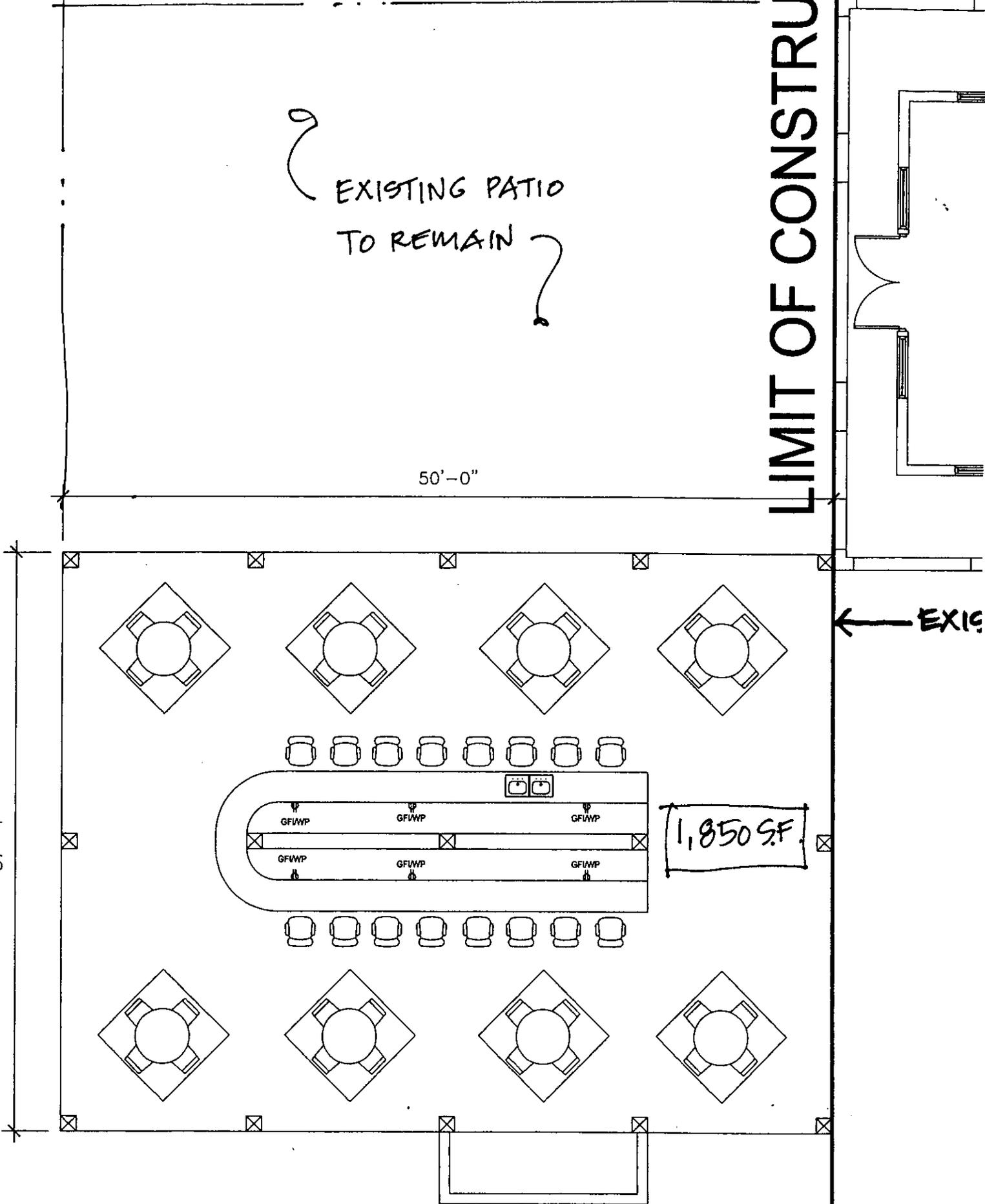
LIMIT OF CONSTRUCTION

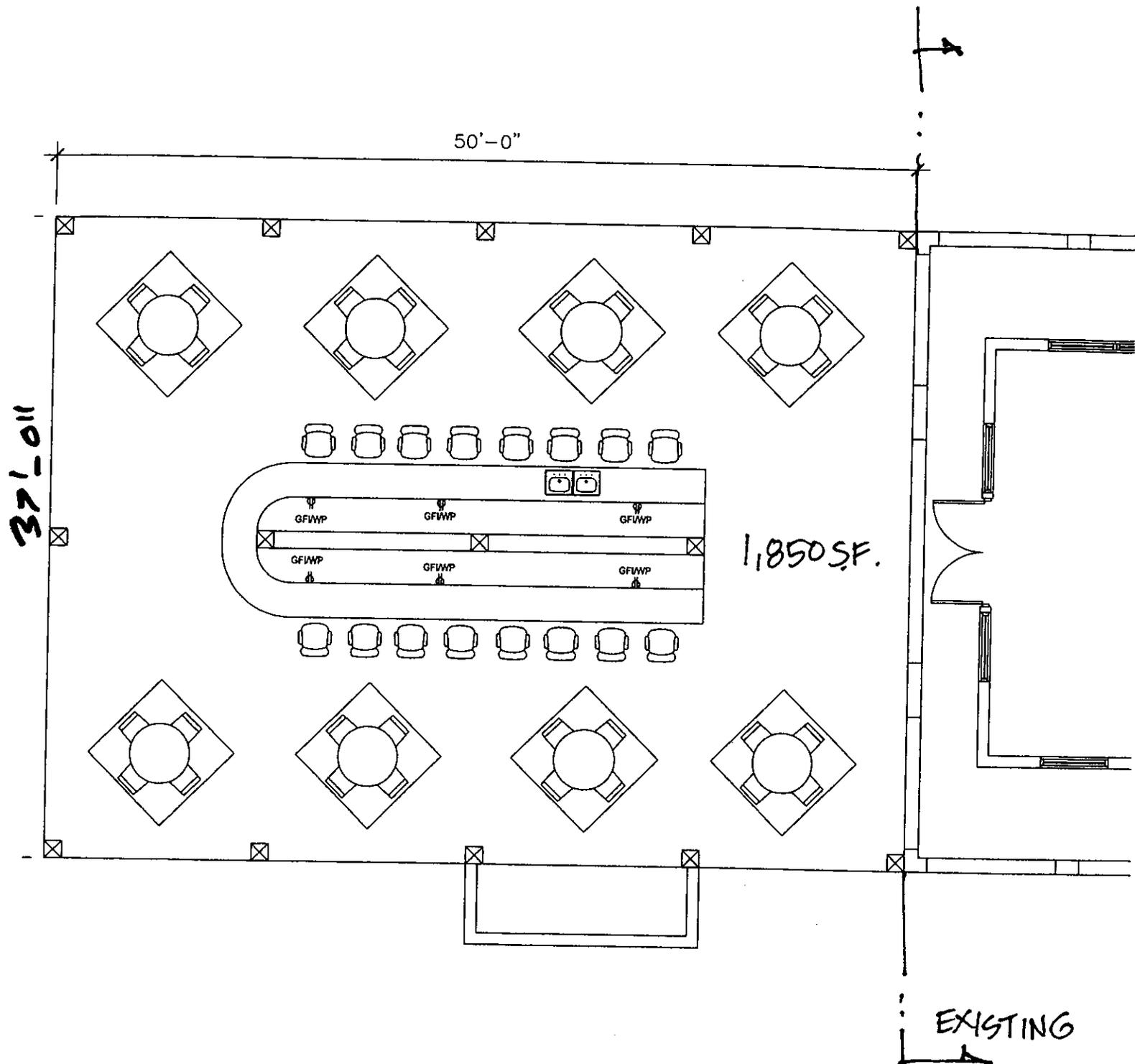
50'-0"

← EXISTING

37'-4"

1,850 S.F.





MARINA PAVILLION

OPT. #1 1/8" = 1'-0"

Browning & Becker Construction, Inc.

State Certified General Contractor License # CGC050930

3460 Fairlane Farms Road, Suite 5, Wellington, FL 33414 * Office 561-790-3224 * Fax 561-791-2440

Fax Cover Sheet

Date: February 27, 2008
To: Hoa Hoang – Town of Lake Park
Phone No.: 561-881-3345
Fax No.: 561-881-3314
Sent By: Jennie
Subject: New Marina Pavilion

Number of Pages (including this cover sheet): 4

Comments:

Attached is the proposal and scope of work for the above referenced property. If you have any questions give Jeff a call at 719-2332.

Browning & Becker Construction, Inc.

State Certified General Contractor License # CGC050930

3460 Fairlane Farms Road, Suite 5, Wellington, FL 33414 * Office 561-790-3224 * Fax 561-791-2440

February 27, 2008

The Town of Lake Park
650 Old Dixie Highway
Lake Park, FL 33403

Attention: Hoa Hoang

Regarding: New Marina Pavilion

Dear Mr. Hoang,

Browning & Becker Construction proposes to construct a new marina pavilion structure of approximately 1,850 square feet for the sum of \$115,038.00. This proposal is based on the preliminary plans sent to Browning & Becker Construction by your office. Not included in this proposal are any permitting fees or construction documents and plans. Attached is a proposed scope of work.

If you have any questions please feel free to call our office.

Respectfully Submitted,

Jefferson M. Browning, President
JMB: jle

Attachment

2/27/2008

1 of 2

New Marina Pavilion - 1,850 Square Feet

Scope of Work

1	Block	
2	Carpentry ~ Materials	
3	Carpentry ~ Rough/Slab	
4	Carpentry ~ Rough/Tie Beam	
5	Carpentry ~ Rough/Roof Framing	
6	Concrete ~ Columns & Beams	
7	Concrete ~ Flatwork (Form, place, finish)	
8	Concrete ~ Pump	
9	Concrete ~ Saw cutting	
10	Concrete ~ Footer	
11	Crane ~ Joists, trusses	
12	Dumpsters	
13	Electrical - \$2,500 allowance	
14	Labor ~ Miscellaneous	
15	Lot prep ~ Compaction & Testing	
16	Lot prep ~ Fill	
17	Lot prep ~ Grading	
18	Lot prep ~ Soil Poisoning	
19	Misc. ~ Washers, bolts, screws, foam, felt	
20	Plumbing - \$2,500 allowance	
21	Portable Toilet	
22	Power ~ Temporary	

2/27/2008

2 of 2

New Pavilion - 1,850 Square Feet

Scope of Work

23	Roof - metal	
24	Structural Steel - Rebar, Footer Chairs, Etc.	
25	Structural Steel - Anchor, Tapcon, Buckets, Straps, Etc.	
26	Stucco	
27	Trusses	
	TOTAL	\$ 115,038.00
ALL MATERIALS AND COLORS ARE STANDARD		

BROWNING - BECKER CONSTRUCTION, INC.

TIKI HUTS BY

VOGELL MARINE INC.

P.O. BOX 30608

PALM BEACH GARDENS, FLORIDA 33420

561-848-3333

WORK ORDER CONTRACT

March 03, 2008

W.O. #08-T100

**Michael Pisano
Marina Director
Lake Park Marina
105 Lake Shore Drive
Lake Park, Fl 33403**

- Construct a 40' x 55' Tiki Hut onto 8" wood post, aluminum truss frame and synthetic thatch.
- 12 - 8" 2.5cca piles
- 30 - bundles Bora Bora synthetic thatch fasten with stainless steel fasteners
- Aluminum fauxboo frame work
- Stainless steel bolts
- \$95,265.00

All material guaranteed to be as specified. All work is to be completed in a professional manner according to standard industry practices. Any alterations or deviations from above specifications involving extra cost will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Contractor is licensed and insured to perform above described work.

Payment Terms: 10% due with signed agreement. 50% of balance due upon receipt of invoice for material delivery and prior to commencement. Balance due upon completion of service.

RESPECTFULLY SUBMITTED: VOGELL MARINE INC. U-17047

Note: This proposal may be withdrawn by us if not accepted within 30 days.

ACCEPTANCE OF PROPOSAL:

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

Date: _____

Signature: _____

JAW CONSTRUCTION, INC.

1000 Stinson Way #105

West Palm Beach, FL 33411

Phone: (561) 333-6738 Fax: (561) 333-6674

CGC #1507094

PROPOSAL

DATE	PROPOSAL #
2/26/2008	108-113

NAME / ADDRESS	Date of Plans & Pages:	JOB NAME / ADDRESS:
Town of Lake Park 105 Lake Shore Drive Lake Park, FL 33403	N/A	SUPPLY & INSTALL NEW 38' X 52' CHICKEE HUT

DESCRIPTION	TOTAL
SCOPE OF WORK: SUPPLY & INSTALL NEW 38' X 52' CHICKEE HUT	
BUILT TO SPECIFICATIONS USING PRESSURE TREATED MARINE QUALITY PILINGS FOR UPRIGHTS. UPPER STRUCTURE WILL BE NORTHERN YELLOW PINE AND THATCH WILL BE GREEN CABBAGE PALMS.	61,651.00
FIRE RETARDANT (CLASS B) WILL BE APPLIED 30 - 35 DAYS AFTER COMPLETION	7,113.00
CLEAR ROLL DOWN VINYL SIDES	12,960.00
PULL ALL APPROPRIATE TOWN PERMITS (\$300 allowance included)	300.00
3 Year Limited Warranty on labor and materials included	
NOTE: Engineered drawings will be submitted upon signing of the contract. Survey to be supplied by owner. Any Electrical work will be priced as per specs.	
TOTAL	\$82,024.00

JAW CONSTRUCTION, INC.

1000 Stinson Way #105
 West Palm Beach, FL 33411
 Phone: (561) 333-6738 Fax: (561) 333-6674
 CGC #1507094

PROPOSAL

DATE	PROPOSAL #
2/26/2008	108-113

NAME / ADDRESS	Date of Plans & Pages:	JOB NAME / ADDRESS:
Town of Lake Park 105 Lake Shore Drive Lake Park, FL 33403	N/A	SUPPLY & INSTALL NEW 38' X 52' CHICKEE HUT

(X) _____ Purchaser sign here	Contract Price	\$82,024.00
(X) _____ Purchaser sign here	Initial deposit (50%)	\$41,012.00
	Balance Due upon Completion (50%)	\$41,012.00

All necessary labor, materials and equipment are included to complete the stated Scope of Work. All material is guaranteed to be as specified. All work is to be completed in a workmanlike manner according to standard practices. All change orders and alterations or deviations from the above specifications involving extra costs will be billed in addition and executed only upon written orders signed by the owner and by an authorized representative of JAW Construction, Inc. All agreements contingent upon strikes, accidents or delays beyond out control. Owner to carry all necessary Insurance upon above work. Workmen's compensation and liability insurance on the above work to be taken out by JAW Construction, Inc.

This contract shall be binding and non-cancelable when once approved and accepted. It is mutually understood and agreed that if delivery of the property is refused or purchaser for any reason refuses to accept the property or perform his obligations hereunder prior to delivery and installation, in that event purchaser further agrees that if it becomes necessary for the seller to retain an Attorney and/or initiate legal proceedings to enforce any of the provision of this contract, then in that event the purchaser agrees to pay reasonable attorney's fees, court costs and other costs of collections incurred by seller.

This note and/or contract shall be in default when purchaser fails to pay and payment due hereunder on or before same is due or fails to comply with any other term or condition of this agreement.

Upon such default the seller may at his option declare the entire unpaid balance immediately due and owing. Such default shall also entitle seller to repossess the property with or without notice for the purpose of enforcing seller's rights and removing such property and the purchaser waives any rights or actions he may have against seller arising out of such entry and re-possession or any damages caused by the removal of the above described property from the premises. Seller cannot be held responsible for delays in delivery in the event of strikes, accidents, shortages, acts of God or any cause beyond our control.



Morgan W. Cooper
Custom Tropical Tikis
166 West 15th Street
Riviera Beach, Florida 33404
(561) 881-8241
www.customtropicaltikis.com
info@customtropicaltikis.com

PROPOSAL FOR SERVICES

Customer Name: Town of Lake Park, Florida
535 Park Avenue
Lake Park, Florida 33403

Contact Person: Mr. Michael Pisano, Harbor Marina Director

Job Location: Lake Park Marina
105 Lake Shore Drive
Lake Park, Florida 33403

Description of Proposed Services: Construction of a 25' x 25' (625 square feet) tiki on the brick patio at the marina. Tiki will be constructed with 12" round pressure treated timbers (support posts) and 6" pressure treated timbers (ceiling frame) with 4" round pressure treated timbers (ceiling beams). Thatching will be palm frond thatching. Galvanized bolts and nails will be used throughout. Structure will be reinforced with hurricane straps. Support posts will be sunk in gravel and sand to 3 ½" depth.

(See attached photos of similar projects).

Cost of Project and Payment Schedule:

Total Cost: \$15,625.00 (*discounted price of \$25.00 per square foot x 625 square feet)

Payment Schedule: \$7,812.50 up front (material advance)
\$7,812.50 immediately upon completion

* Usual rate is \$30.00 per square foot

RAINBOW CANVAS

Adel Khalil, Owner

Est. 1985

850 Old Dixie Hwy., Bay #1, Lake Park, Florida 33403

561-844-0557 • Fax: 561-844-7335

Name Mike

Address _____

City 105 Lake Shore Dr State _____ Zip _____

Job Location _____ Phone 723-2945

Address _____

City _____ State _____ Zip _____

37x56 Awning

1 Squade 40
2" pipe
galvanized steel
painted Rust Free
5 years warranty

FABRIC NUMBER
COLOR
VALANCE STYLE
LENGTH

1	
2	
3	
4	
5	
6	
7	

CONTRACTOR MUST VERIFY ALL EXISTING BUILDING DIMENSIONS PRIOR TO FRAME MANUFACTURING.

AWNING MUST BE REMOVED WHEN WIND LOAD VELOCITY EXCEEDS 75 M.P.H. DESIGN PER ASCE 7-83

ALL CONSTRUCTION AND MATERIAL SHALL COMPLY WITH APPLICABLE BUILDING CODES AND BUILDING DEPARTMENT REQUIREMENTS.

SUBTOTAL	\$	<u>37000</u>
SALESTAX	\$	_____
TOTAL CONTRACT PRICE	\$	_____
50% DEPOSIT	\$	_____
BALANCE DUE	\$	_____

FULL BALANCE DUE TO BE PAID TO THE INSTALLER AT COMPLETION OF INSTALLATION OF THE PRODUCT. I HAVE READ THE TERMS AND CONDITIONS OF SALE SET FORTH AND AGREE TO THEM.

Accepted by:
RAINBOW CANVAS, INC.

Signature of Buyer _____ Date _____

By: _____ Date: _____

Signature of Sales Person _____ Date _____