



AGENDA

Lake Park Town Commission
Town of Lake Park, Florida
Regular Commission Meeting
Wednesday, April 15, 2009,
Immediately following the
Special Call Attorney-Client Session
Lake Park Town Hall
535 Park Avenue

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

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 on either side of the Chambers and given to the Town Clerk. Cards must be submitted before the item is discussed.

For Approval:

- | | |
|---|-------|
| 1. 2010 Census Complete Count Committee Proclamation | Tab 1 |
| 2. Award of Ball Field Security Fence Bid | Tab 2 |
| 3. Resolution No. 14-04-09 Signatures for Bank Accounts | Tab 3 |
| 4. Marina South Breakwater Increase in Contract for Rock Punching | Tab 4 |
| 5. Resolution No. 17-04-09 2009 DOJ Edward Byrne Memorial JAG Grant | Tab 5 |

I. PUBLIC HEARING(S)

ORDINANCE ON SECOND READING:

**6. Ordinance No. 07-2009 Update Purchasing Procedures for Contracts
AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING THE TOWN CODE AT CHAPTER 2, ARTICLE V, DIVISION 2, ENTITLED "PURCHASING" TO AMEND SECTION 2-243 ENTITLED "REQUIREMENT OF GOOD FAITH"; SECTION 2-245 ENTITLED "DEFINITIONS"; SECTION 2-247 ENTITLED "PROCUREMENT METHODS"; SECTION 2-248 ENTITLED "COMPETITIVE SEALED BID PROCESS"; SECTION 2-249 ENTITLED "COMPETITIVE SEALED PROPOSAL PROCESS"; SECTION 2-250 ENTITLED "ALTERNATIVE SOURCE ELECTION"; AND SECTION 2-252 ENTITLED "PROTESTED SOLICITATIONS AND AWARDS"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

Tab 6

J. COMMISSIONER COMMENTS, TOWN ATTORNEY, TOWN MANAGER:

K. ADJOURNMENT:

Board Membership

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

Meeting Date: April 15, 2009 Agenda Item No. *Board Membership*

- | | |
|--|---|
| <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 checked="" type="checkbox"/> BOARD MEMBERSHIP | <input type="checkbox"/> RESOLUTION

<input type="checkbox"/> DISCUSSION

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

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

SUBJECT: Board Appointments

RECOMMENDED MOTION/ACTION: To appoint three regular members and two alternate members to the Planning & Zoning Board from the attached applicants.

Approved by Town Manager *W. Davis* Date: *4/8/09*
 Name/Title *Jessica Shee Deputy Clerk* Date of Actual Submittal *4/7/09*

Originating Department: Town Clerk	Costs: \$ _____ Funding Source: _____ Acct. # _____	Attachments: Board Applications
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>YMC</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 _____: Please initial one.

Summary Explanation/Background: The Planning and Zoning Board has three regular membership openings and two alternate membership openings on the Board. The Town Clerk's office has received the attached applications for membership to this Board. Mason Brown is currently an alternate member of the Planning & Zoning Board who is applying for regular membership. Robin Maibach is currently an alternate member who is applying for

either regular membership or alternate membership. Jeff Blakely, Tim Stevens, and Todd Dry are currently regular members who are applying for regular membership.

BALLOT

MAYOR/COMMISSIONER

THE TOWN COMMISSION MAY APPOINT A FIVE MEMBER PLANNING & ZONING BOARD WITH TWO ALTERNATES. THE BOARD CURRENTLY HAS THREE REGULAR MEMBERSHIP POSITIONS OPEN AND TWO ALTERNATE MEMBERSHIP POSITIONS OPEN. PLEASE CHOOSE THREE MEMBERS FROM THE LIST OF APPLICANTS BELOW FOR REGULAR MEMBERSHIP.

Current Regular Members

	Yes	No
Jeff Blakely (Current Chair)	—	—
Todd Dry (Current Vice-Chair)	—	—
Tim Stevens (Regular member)	—	—

Alternate Members

Mason Brown (Current 2 nd alternate member)	—	—
Robin Maibach (Current 1 st alternate member)	—	—

- NO OTHER APPLICATIONS HAVE BEEN RECEIVED



LAKE PARK TOWN HALL

NATIONAL HISTORIC SITE

"Jewel of the Palm Beaches"

The Town of Lake Park

Application to Serve on Town Boards and Committees

This application serves as an information file of the skills, talents and interests of citizens who are willing to serve on advisory boards and committees for the Town of Lake Park. When an opening occurs on one of the Boards on which you have indicated a desire to serve, your application will be submitted to the Town Commission. You will be notified by mail when appointment has been made.

Please print the following information:

Name: BLAKELY JEFF D
Last First Middle

Address: 105 PARK AVENUE

Telephone: home 844 1108 work 621 6145 cell _____

Are you a resident of Lake Park Yes No

Are you a non-resident business owner in Lake Park Yes No

Are you a registered voter (Response to this question is not mandatory) Yes No

Do you currently serve on a Town Board or Committee Yes No

If so, which one(s): PANHANDLE & ZONING

Have you been convicted of a crime Yes No

If so, when? 1974 (see previous application) where? W.P.B., FL

Please indicate your preference by number "1" through "5" of no more than five boards on which you wish to serve, with #1 being the most desired and #5 being the least desired.

- | Choice # | Board |
|--------------------------|--|
| <input type="checkbox"/> | Code Compliance * |
| <input type="checkbox"/> | CRA Board (Community Redevelopment Agency) |
| <input type="checkbox"/> | Harbor Marina Advisory Board |
| <input type="checkbox"/> | Library Board |
| <input type="checkbox"/> | Merit Board |

- | Choice # | Board |
|-------------------------------------|---|
| <input type="checkbox"/> | Pension Trust Fund (Police) |
| <input checked="" type="checkbox"/> | Planning & Zoning/Historic Preservation Board * |
| <input type="checkbox"/> | Tree Board |
| <input type="checkbox"/> | Other: _____ |

Please note: Membership on these (*) Boards require members to complete an annual Confidential disclosure form pursuant to F.S. 112-3145(1)(b), (2)(g), (7)

535 Park Avenue, Lake Park, Florida 33403
Lake Park Board Application

(561) 881-3311 Fax (561) 881-3313

Page 2

Your Name: JEFF BLAKELY

Please indicate the reason for your interest in your first and second choices:

I HAVE SERVED ON THIS BOARD FOR MANY YEARS AND WOULD LIKE TO CONTINUE MY SERVICE.

Number of Meetings of the above boards you have attended in the past six months: 6+

Your educational background: (High school, College, Graduate School or other training)

GRADUATE SCHOOL; BFA, FLORIDA ATLANTIC UNIV., 1968
M.S., FLORIDA STATE UNIVERSITY, 1971

What is/was your profession or occupation: LANDSCAPE ARCHITECT & LAND PLANNER
How long 20 Yrs.

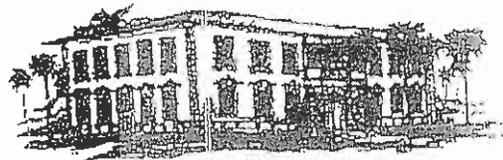
Please indicate employment experience that you feel relates to your desired service on an advisory board or committee: SEE ABOVE

Please indicate other general experience or community involvement that you feel qualifies you to serve on the boards you have chosen: REPRESENTATIVE OF LARGES TREE BOARDS LIKE OURS IN COMMUNITIES THROUGHOUT THE COUNTY

Feel free to attach additional sheets if required. Also, please attach your resume, if available. Please return your completed form to the Office of the Town Clerk, 535 Park Avenue, Lake Park, Florida 33403

I HEREBY CERTIFY THAT THE STATEMENT AND ANSWERS PROVIDED ARE TRUE AND ACCURATE. I UNDERSTAND THAT ANY FALSE STATEMENTS MAY BE CAUSE FOR REMOVAL FROM A BOARD OR COMMITTEE, IF APPOINTED:

Signature: Jeff Blakely Date: 4/20/07



The Town of Lake Park

LAKE PARK TOWN HALL

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Please print the following information:

Name: Brown Mason B.
Last First Middle

Address: 131 Hawthorne Dr - Lake Park, FL 33409

Telephone: home 561-848-7571 work _____ cell 561-718-3068

Are you a resident of Lake Park	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are you a non-resident business owner in Lake Park	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are you a registered voter (Response to this question is not mandatory)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Do you currently serve on a Town Board or Committee	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If so, which one(s): _____		
Have you been convicted of a crime	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If so, when? _____ where? _____		

Please indicate your preference by number "1" through "5" of no more than five boards on which you wish to serve, with #1 being the most desired and #5 being the least desired.

Choice #	Board	Choice #	Board
<input type="checkbox"/>	Code Compliance *	1	Pension Trust Fund (Police)
<input type="checkbox"/>	CRA Board (Community Redevelopment Agency)	2	Planning & Zoning/Historic Preservation Board *
<input type="checkbox"/>	Harbor Marina Advisory Board	<input type="checkbox"/>	Tree Board
<input type="checkbox"/>	Library Board	<input type="checkbox"/>	Other: _____
<input type="checkbox"/>	Merit Board		
<input checked="" type="checkbox"/>	Construction Board of Adjustments & Appeals		

Please note: Membership on these (*) Boards require members to complete an annual form of disclosure form pursuant to F.S. 112.31(4)(b)(i).

535 Park Avenue, Lake Park, Florida 33403
Lake Park Board Application

(351) 881-3311 FAX (561) 881-3313

page 2

Your Name: Mason B. Brown

Please indicate the reason for your interest in your first and second choices:

I am a Certified General Contractor and I feel that I can be an asset to my town and the residents.

Number of Meetings of the above boards you have attended in the past six months: 0

Your educational background: (High school, College, Graduate School or other training)

College Grad

What is/was your profession or occupation: Gen Contractor - Business Developer

How long: 5 Yr, 40+ YRS

Please indicate employment experience that you feel relates to your desired service on an advisory board or committee:

Ownership Own Business for the past 30 yrs Plus - Excellent in Managing People + Working w them

Please indicate other general experience or community involvement that you feel qualifies you to serve on the boards you have chosen:

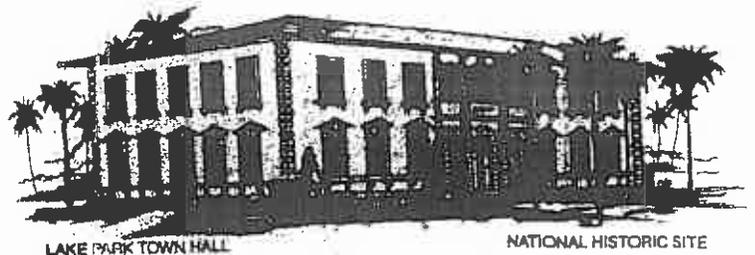
Am very active in my Church

Feel free to attach additional sheets if required. Also, please attach your resume, if available. Please return your completed form to the Office of the Town Clerk, 535 Park Avenue, Lake Park, Florida 33403.

I HEREBY CERTIFY THAT THE STATEMENT AND ANSWERS PROVIDED ARE TRUE AND ACCURATE. I UNDERSTAND THAT ANY FALSE STATEMENTS MAY BE CAUSE FOR REMOVAL FROM A BOARD OR COMMITTEE, IF APPOINTED:

Signature: Mason B. Brown Date: 11/11/11

The Town of Lake Park



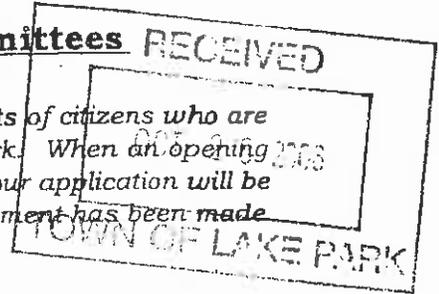
LAKE PARK TOWN HALL

NATIONAL HISTORIC SITE

"Jewel" of the Palm Beaches

Application to Serve on Town Boards and Committees RECEIVED

This application serves as an information file of the skills, talents and interests of citizens who are willing to serve on advisory boards and committees for the Town of Lake Park. When an opening occurs on one of the Boards on which you have indicated a desire to serve, your application will be submitted to the Town Commission. You will be notified by mail when appointment has been made.



Please print or type the following information:

Name: DRY TODD W.
Last First Middle Initial

Address: 1060 Coral Way Riviera Beach FL 33404

Telephone: 863-1592 home 248-8308 cell work

	Yes	No
Are you a resident of Lake Park	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Are you a non-resident business owner in Lake Park	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Are you a registered voter (Response to this question is not mandatory)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Do you currently serve on a Town Board or Committee	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If so, which one(s): _____		
Have you been convicted of a crime	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If so, when? _____ where? _____		

Please indicate your preference by numbers "1" through "5" of no more than five boards on which you wish to serve, with #1 being the most desired and #5 being the least desired.

Choice #	Board	Choice #	Board
<input checked="" type="checkbox"/> 5	Board of Adjustment*	<input type="checkbox"/>	Pension Trust Fund (Fire)
<input checked="" type="checkbox"/> 3	Code Compliance*	<input type="checkbox"/>	Pension Trust Fund (Police)
<input type="checkbox"/>	Education Advisory Board	<input checked="" type="checkbox"/> 4	Planning & Zoning/ Historic Preservation Board *
<input type="checkbox"/>	Library Board	<input type="checkbox"/>	Town Tree Board
<input checked="" type="checkbox"/> 2	CRA Board	<input type="checkbox"/>	Merit Board*
<input checked="" type="checkbox"/> 4	Marina Development Control Bd.	<input type="checkbox"/>	Other _____

Please note: Membership on these (*) Boards requires members to complete an annual financial disclosure form pursuant to F.S. 112.3145(1)(a), (2)(b), (7)

Your Name: TODD W DRY

Please indicate the reason for your interest in your first and second choices:

I would like to serve as PZ in order to help with the comp plan for the city. I enjoy this city + feel it has a lot to offer + with proper zoning choices should be able to attract more health business to Lake Park. Same goes for the CRA choice.

Number of Meetings of the above boards you have attended in the past six months: 3⁺

Your Educational Background: (High School, College, Graduate School or other training)
2 year Associate Degree Louisburg College + 4 year BA in Communications from University of N.C. at Wilmington + A Fla. State General Contractor.

What is/was your profession or occupation? Real Estate Construction

How long? 15⁺ years in Fla

Please indicate employment experience that you feel relates to your desired service on an Advisory Board or Committee: Best knowledge of Northern PB County development along with

my own business of buying property in this area over the years along with my Construction Knowledge allows me to understand land usages + zoning requirements + their proper designation

Please indicate other general experience or community involvement that you feel qualifies you to serve on the boards you have chosen: I am familiar with the process involved by having my own properties rezoned + subdivided etc. I have watch areas in PB County go through rapid growth over the past 15+ years with the proper planning resulting in specific areas of PB County.

Feel free to attach additional sheets if required. Also, please attach your resume, if available.

Please return your completed form to the Office of the Town Clerk, 535 Park Avenue, Lake Park, Florida 33403

I HEREBY CERTIFY THAT THE STATEMENTS AND ANSWERS PROVIDED ARE TRUE AND ACCURATE. I UNDERSTAND THAT ANY FALSE STATEMENTS MAY BE CAUSE FOR REMOVAL FROM A BOARD OR COMMITTEE, IF APPOINTED.

Signature: Todd W. Dry

Date: 10-26-06

The Town of Lake Park



Application to Serve on Town Boards and Committees

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Please print or type the following information:

Name: MIAIBACH MOBIN L
Last First Middle Initial

Address: 414 Lakeshore Drive Lake Park FL 33403

Telephone: 561 842-4890 home 561 655 8544 x2041 work

	Yes	No
Are you a resident of Lake Park	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Are you a non-resident business owner in Lake Park	<input type="checkbox"/>	<input type="checkbox"/>
Are you a registered voter (Response to this question is not mandatory)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Do you currently serve on a Town Board or Committee	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If so, which one(s): <u>Code Compliance</u>		
Have you been convicted of a crime	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If so, when? _____ where? _____		

Please indicate your preference by numbers "1" through "5" of no more than five boards on which you wish to serve, with #1 being the most desired and #5 being the least desired.

<u>Choice #</u>	<u>Board</u>	<u>Choice #</u>	<u>Board</u>
<input type="checkbox"/>	Board of Adjustment*	<input type="checkbox"/>	Pension Trust Fund (Fire)
2 <input checked="" type="checkbox"/>	Code Compliance*	<input type="checkbox"/>	Pension Trust Fund (Police)
<input type="checkbox"/>	Education Advisory Board	3 <input checked="" type="checkbox"/>	Planning & Zoning/ Historic Preservation Board *
5 <input type="checkbox"/>	Library Board	4 <input checked="" type="checkbox"/>	Town Tree Board
<input type="checkbox"/>	CRA Board	<input type="checkbox"/>	Merit Board*
1 <input checked="" type="checkbox"/>	Marina Development Control Bd.	<input type="checkbox"/>	Other _____

Please note: Membership on these (*) Boards requires members to complete an annual financial disclosure form pursuant to F.S. 112.3145(1)(a), (2)(b), (7)

Your Name: Robin Maibach

Please indicate the reason for your interest in your first and second choices:

~~I am an experienced boater~~ ① I am an experienced boater & live a few blocks from the marina. ② I own a home in Lake Park

Number of Meetings of the above boards you have attended in the past six months: 5

Your Educational Background: (High School, College, Graduate School or other training)

What is/was your profession or occupation? Admissions Coordinator / Social Services
How long? 6 months

Please indicate employment experience that you feel relates to your desired service on an Advisory Board or Committee: Sales, Marketing & Social Services all involve communication skills.

Please indicate other general experience or community involvement that you feel qualifies you to serve on the boards you have chosen: I am a good neighbor & a compliant property owner

Feel free to attach additional sheets if required. Also, please attach your resume, if available.

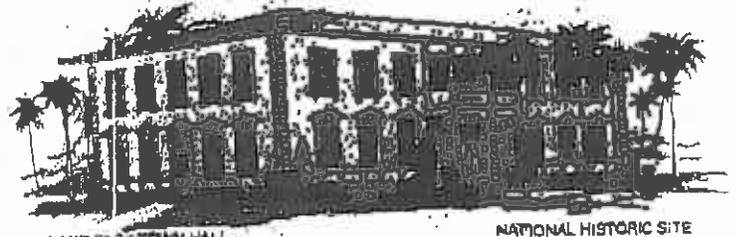
Please return your completed form to the Office of the Town Clerk, 535 Park Avenue, Lake Park, Florida 33403

I HEREBY CERTIFY THAT THE STATEMENTS AND ANSWERS PROVIDED ARE TRUE AND ACCURATE. I UNDERSTAND THAT ANY FALSE STATEMENTS MAY BE CAUSE FOR REMOVAL FROM A BOARD OR COMMITTEE, IF APPOINTED.

Signature: Robin Maibach

Date: 2-15-07

The Town of Lake Park



LAKE PARK TOWN HALL

NATIONAL HISTORIC SITE

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Application to Serve on Town Boards and Committees

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Please print or type the following information:

Name: Stevens Tim L
Last First Middle Initial

Address: 133 Foresteria Dr

Telephone: 386-3056 ~~home~~ 833 5787 Ext 3111 ~~cell~~ work

- | | Yes | No |
|---|-------------------------------------|-------------------------------------|
| Are you a resident of Lake Park | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Are you a non-resident business owner in Lake Park | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Are you a registered voter (Response to this question is not mandatory) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Do you currently serve on a Town Board or Committee | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| If so, which one(s): _____ | | |
| Have you been convicted of a crime | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| If so, when? _____ where? _____ | | |

Please indicate your preference by numbers "1" through "5" of no more than five boards on which you wish to serve, with #1 being the most desired and #5 being the least desired.

Choice #	Board	Choice #	Board
<input type="checkbox"/>	Board of Adjustment*	<input type="checkbox"/>	Pension Trust Fund (Fire)
<input type="checkbox"/>	Code Compliance*	<input type="checkbox"/>	Pension Trust Fund (Police)
<input type="checkbox"/>	Education Advisory Board	<input checked="" type="checkbox"/> 1	Planning & Zoning/ Historic Preservation Board *
<input type="checkbox"/>	Library Board	<input type="checkbox"/>	Town Tree Board
<input checked="" type="checkbox"/> 2	CRA Board	<input type="checkbox"/>	Merit Board*
<input checked="" type="checkbox"/> 3	Marina Development Control Bd.	<input type="checkbox"/>	Other _____

Please note: Membership on these (*) Boards requires members to complete an annual financial disclosure form pursuant to F.S. 112.3145(1)(a), (2)(b), (7)

Lake Park Board Application

Page 2

Your Name: Tim Stevens

Please indicate the reason for your interest in your first and second choices:

- 1) Planning & Zoning as a resident of Lake Park I have a vested interest in shaping new development while preserving the town's history
- 2) CRA again, I want to help shape new development in Lake Park

Number of Meetings of the above boards you have attended in the past six months: 0

Your Educational Background: (High School, College, Graduate School or other training)
Law School

What ~~is~~ was your profession or occupation? lawyer
How long? 2 1/2 years

Please indicate employment experience that you feel relates to your desired service on an Advisory Board or Committee: analyzing documents, critical

thinking, working well w/ others, negotiating agreements, drafting legal documents

Please indicate other general experience or community involvement that you feel qualifies you to serve on the boards you have chosen: I have a long history of helping

others of interest: student government, environmental organizations, public law, human rights organizations

Feel free to attach additional sheets if required. Also, please attach your resume, if available. I updated an old 2003 resume with a pen,

Please return your completed form to the Office of the Town Clerk, 535 Park Avenue, Lake Park, Florida 33403

I HEREBY CERTIFY THAT THE STATEMENTS AND ANSWERS PROVIDED ARE TRUE AND ACCURATE. I UNDERSTAND THAT ANY FALSE STATEMENTS MAY BE CAUSE FOR REMOVAL FROM A BOARD OR COMMITTEE, IF APPOINTED.

Signature: Tim Stevens

Date: 4/20/06

Consent Agenda

TAB 1

Town of Lake Park Town Commission
Agenda Request Form

Meeting Date: April 15, 2009

Agenda Item No. *Tab 1*

- | | |
|--|---|
| <input type="checkbox"/> PUBLIC HEARING
<input type="checkbox"/> ORDINANCE ON SECOND READING
<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: Proclamation declaring partnership with the Census Bureau to create a Complete Count Committee

RECOMMENDED MOTION/ACTION: Approval

Approved by Town Manager *W. Davis* **Date:** *4/9/09*
Vivian Lemley **Name/Title** *4/6/09* **Date of Actual Submittal**

Originating Department: Town Clerk	Costs: \$ 0.00 Funding Source: Acct. #	Attachments: Proclamation Brochure
Department Review: <input type="checkbox"/> Attorney _____ <input type="checkbox"/> Community Development _____ <input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____	<input type="checkbox"/> Grants _____ <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"/> Recreation _____ <input checked="" type="checkbox"/> Town Clerk <i>YML</i> <input 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>n/a</u> Please initial one.

Summary Explanation/Background: In 2010, the U.S. Census Bureau will issue a call to action for every resident of our nation: "Be Counted." The brochure attached provides information on the importance of the Complete Count Committee.



IT'S IN OUR HANDS

Become a 2010 Census Partner

In 2010, the U.S. Census Bureau will issue a call to action for every resident of our nation: "Be Counted."

The 2010 Census is important. It determines the distribution of \$300 billion annually of government funding for critical community services and generates thousands of jobs across the country.

As an elected leader, your support matters. You can encourage your constituents to participate, ensuring they get their fair share of government funding, census jobs and Congressional seats. Partner with us and ensure your constituents have an active voice in their future.

By supporting the 2010 Census, you will:

- **Bring jobs to your community.** The Census Bureau will hire hundreds of thousands of people nationwide for temporary census jobs. By recruiting applicants in your community, you may help boost your local economy.
- **Make informed decisions.** You may use census data to guide important decisions for your community, such as where to build roads, schools, job training centers and more. Billions of dollars in funding for these projects are at stake — an incomplete count could mean your community misses out.
- **Ensure your interests are represented.** Redistricting will occur on the state and local level using data collected in the 2010 Census. These data also determine how many seats your state will have in Congress. A complete count is vital to accurate representation.

Take action:

- Issue a proclamation or other public endorsement for the 2010 Census.
- Sponsor "town hall" meetings or other events to encourage census participation.
- Help recruit census workers in your community.
- Provide space and staff for testing and training census employees.
- Create a Complete Count Committee in your area.

For more information about becoming a 2010 Census partner, go to www.census.gov/2010census.

STATE AND LOCAL GOVERNMENTS

FAST FACTS ABOUT THE CENSUS

Safe. The Census Bureau protects information that identifies respondents or their households for 72 years.

Easy. The questionnaire contains only a few simple questions and takes just a few minutes to answer and return by mail.

Everyone counts. The census is a count of everyone living in the United States, including all 50 states, Washington, D.C., Puerto Rico, U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa. This includes people of all ages, races, ethnic groups, both citizens and non-citizens.

Coming soon. Census questionnaires will be mailed in March 2010.

Town of Lake Park 2010 Census Proclamation

Whereas, the next **Decennial Census** will be taken in the year 2010, and political representation to the United States House of Representatives, state legislatures and local governments is determined by the **Decennial Census**, and the Town of Lake Park recognizes the equal importance of each resident in the 2010 Census count; and

Whereas, the Town of Lake Park has agreed to be one of 39,000 government entities in partnership with the U.S. Census Bureau; and

Whereas, the Town of Lake Park understands that its primary role in this partnership is to formulate a **COMPLETE COUNT COMMITTEE** that should include, but is not limited to the following sub-committees: Government, Education, Media, Faith-Based/Religion, Community-based Organizations, Business, Recruiting, and Special Housing; and

Whereas, the role of the **Government** sub-committee is to bridge all gaps between the community and the Census Bureau on geographic matters, outreach activities, and information centers; and

Whereas, the role of the **Education** sub-committee is to create census awareness programs for pre-kindergarten to college-age students, coalesce with educational institutions, distribute Census Bureau Education programs, and to encourage parents and college students to apply for Census jobs; and

Whereas, the role of the **Media** sub-committee is to utilize all aspects (print and electronic) of its industry to inform, motivate, and educate the city's residents in the necessity and importance of their rapid response and 100% participation in the 2010 Census; and

Whereas, the role of the **Faith-Based/Religion** sub-committee is to form a cross denominational coalition for the dissemination of Census information, inclusion of special announcements in church bulletins and sermons, hosting of Census awareness activities, and circulation of Census job opening bulletins; and

Whereas, the role of the **Community-based Organizations** sub-committee is to make the community aware of the many ways Census data is used to obtain funding for essential services and programs; and

Whereas, the role of the **Business** sub-committee is to encourage all area businesses to advertise the Census message in sales advertisements, promotional materials and displays, and to sponsor 2010 Census community awareness activities; and

Whereas, the role of the **Recruiting** sub-committee is to receive and disseminate to all segments of the community, information regarding the availability of Census jobs in the local area; and

Whereas, the role of the **Special Housing** sub-committee is to assist in the location of shelters, soup kitchens, non-sheltered outdoor locations, group quarters, and other non-conventional housing facilities; and

Therefore, I Desca DuBois, Mayor of the Town of Lake Park hereby proclaim full support of and participation in the overwhelming success of 2010 Census through the formulation of a **COMPLETE COUNT COMMITTEE**.

Desca DuBois, Mayor

Vivian M. Lemley, Town Clerk

TAB 2

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

Meeting Date: April 15, 2009

Agenda Item No. Tab 2

- | | |
|--|--|
| <input type="checkbox"/> PUBLIC HEARING

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

<input checked="" type="checkbox"/> BID/RFP Award

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

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

<input type="checkbox"/> DISCUSSION

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

SUBJECT: Authorize Transfer of Matching Town Funds from Community Improvement Beautification Fund to the Special Projects (Grants) Fund.

Award of Contract to A GREAT FENCE, LLC, for Bid No. 02-2009, Ball Fields Security Fencing, in the amount of \$67,264.00.

RECOMMENDED MOTION/ACTION: Approve Transfer of Funds and Award of Contract

Approved by Town Manager W. Davis Date: 4/9/09
 Richard Pittman/CRA Project Manager April 8, 2009
 Name/Title Date of Actual Submittal

Originating Department: Community Redevelopment/ Public Works	Costs: \$ 67,264.00 Funding Source: Special Projects (Grants) Fund Acct. # 301-57-572-301- 63804	Attachments: Bid Tabulation
Department Review: <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development _____ <input type="checkbox"/> Finance _____	<input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Grants _____ <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 type="checkbox"/> Town Manager _____
Advertised: Date: <u>March 1, 2009</u> Paper: <u>Palm Beach Post</u> <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 <u>RP</u> or Not applicable in this case _____: Please initial one.

Summary Explanation/Background: There is a need to eliminate unauthorized use of the fields and provide more security for the youth groups that use the ball fields at the park located between 6th and 7th Streets north of Bayberry Drive. The existing fencing at the perimeters of the fields varies in height from 4' to 6'. An 8' high fence is desired to provide the needed security.

Bid number 02-2009, Ball Fields Security Fencing, was advertised for bid on March 1, 2009. Bids were opened March 31, 2009 with six bids having been received. A Great Fence, LLC submitted the low base bid plus Alternates I, II, & III in the amount of \$67,264.00 (see attached bid tabulation).

The project involves replacing the fencing on three perimeters of the play fields with 8' high green vinyl coated chain link fence. The fourth side (north side) abuts residential properties where the existing 6' residential fences will provide the needed security. The little league field backstop will be refurbished and two dugouts will be refitted with new fence fabric. The batting cage and two dugouts will be completely removed.

New 4' high green vinyl chain link fencing will be installed at the basketball court and at the children's playground.

The project was bid with three Alternates allowing the Town to select additional fencing work. Alternate I is to refurbish two fenced enclosures of the electric service panels. This alternate is \$1,400.00.

Alternate II is to remove the existing 4' fence at the little league outfield and replace with 4' green vinyl coated chain link fence. Alternate II is \$5,680.00.

Alternate III is to construct a bottom rail on all 8' fencing in place of tension wire. This alternate is \$5,244.00.

By selecting all three alternates, all existing galvanized fencing will be replaced with green vinyl chain link fabric.

The recommendation is to award a contract to A Great Fence, LLC in the amount of \$67,264.00 for their low base bid and all three alternates. The project is funded in part by Federal funds. The Town has received a HUD grant in the amount of \$ 60,151.00. The remaining amount (\$7,113.00) will be funded by the Community Improvement Beautification Fund. The grant requires that the Town initially fund the entire project and request reimbursement as the construction progresses. An account will be established within the Special Projects (Grants) Fund and the Town match will be funded with the transfer from the Community Improvement Beautification Fund.

The contract allows ninety days to complete the project from the Notice to Proceed date.

A Great Fence, LLC is based in Port St. Lucie, Florida. They have been in business for three years. They have accomplished fencing for the City of Palm Beach Gardens, City of Fort Pierce and recently completed the fencing at the Town owned apartment property on Foresteria Drive.

Approval of Award of Contract to A Great Fence, LLC is recommended.

**BALL FIELDS SECURITY FENCING
TOWN OF LAKE PARK BID NO. 02-2009
SCHEDULE OF BID ITEMS**

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	**A GREAT FENCE, LLC		MARTIN FENCE COMPANY		FENCE CRAFTERS, INC		TROPIC FENCE INC.		LAWRENCE FENCE CORP.		U.S.FENCE & GATE, INC.	
				Bid Amount \$		Bid Amount \$		Bid Amount \$		Bid Amount \$		Bid Amount \$		Bid Amount \$	
1	Indemnification	Job	1	100.00		100.00		100.00		100.00		100.00		100.00	
2	Mobilization, Registration with Town & Permits	L.S.	1	INCLUDED		1,520.00		1,563.00		3,624.00		1,000.00		4,000.00	
3	Underground Locates incl. Easements, Field Lighting, Power & Services to Buildings, Irrigation Pump and Irrigation System.	L.S.	1	INCLUDED		1,250.00		1,238.00		2,040.00		2,000.00		4,500.00	
4	Remove and Dispose of Existing Fencing, Two Dugouts, Batting Cage and Materials from Backstop	L.S.	1	3,680.00		4,180.00		6,500.00		13,734.00		7,697.23		9,995.00	
5	Provide Labor, Equipment, and Materials to Install 4' and 8' High Green Vinyl Chain Link Fence and Gates, incl. Refurbish Backstop and Two Dugouts	L.S.	1	49,980.00		58,817.00		66,885.00		56,876.00		68,702.00		71,485.00	
6	Miscellaneous inc. filling holes, sod at holes and where dugouts and batting cage removed.	L.S.	1	1,180.00		950.00		500.00		2,586.00		2,477.77		4,450.00	
	BASE BID: TOTAL ITEMS 1 THRU 6			54,940.00		66,817.00		76,786.00		78,960.00		81,977.00		94,530.00	
7	ALTERNATE I: Construct or Refurbish Two (2) Electric Service Fenced Enclosures.	L.S.		1,400.00		3,575.00		3,949.00		6,893.00		5,377.00		1,995.00	
8	ALTERNATE II: Remove 4' Outfield Fence. Construct 4' Green Vinyl Chain Link Fence.	L.S.		5,680.00		5,530.00		6,900.00		5,595.00		5,677.00		6,200.00	
9	ALTERNATE III: Construct Green Vinyl Coated Sch. 40 Bottom Rail in place of tension wire	L.S.		5,244.00		5,470.00		6,072.00		5,368.00		3,171.17		4,650.00	
	\$ _____ /1' 8' fence if major changes.			3.80		27.50		25.00		22.65		24.07		28.00	
	\$ _____ /1' 4' fence if major changes			3.80		17.50		19.00		14.13		13.67		20.00	
**	RECOMMENDED AWARD BASE BID + ALTERNATES I,II,&III			\$ 67,264.00											

Tabulated by: Richard Pittman, CRA Project Manager

TAB 3

Town of Lake Park Town Commission
Agenda Request Form

Meeting Date: April 15, 2009

Agenda Item No. Tab 3

- | | |
|--|--|
| <input type="checkbox"/> PUBLIC HEARING | <input checked="" 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: Signature Resolution

RECOMMENDED MOTION/ACTION: Approve attached resolution.

Approved by Town Manager *W. Davis* Date: *4/9/09*
Anne M. Costello *4/16/09*
 Name/Title Finance Director Date of Actual Submittal

Originating Department: Finance	Costs: \$ No cost Funding Source: Acct. #	Attachments: Copy of Resolution
Department Review: <input type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development _____	<input checked="" type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____ <input type="checkbox"/> PBSO _____	<input checked="" type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input 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 resolution is necessary to change the authorized signatories on the specified bank accounts to conduct Town Business.

RESOLUTION NO. 14-04-09

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, APPOINTING MAYOR DESCA DUBOIS, VICE MAYOR JEFFREY CAREY, COMMISSIONER PATRICIA OSTERMAN AND FINANCE DIRECTOR ANNE M. COSTELLO AS AUTHORIZED SIGNATORIES ON NATIONAL CITY BANK ACCOUNTS PAYABLE ACCOUNT # 2277656, PAYROLL ACCOUNT #1565960, REVENUE ACCOUNT #1531509 AND NOW ACCOUNT #987600441 REMOVING ANY UNAUTHORIZED SIGNATORY ON SAID ACCOUNTS, ANY PERSON PREVIOUSLY APPOINTED AS SUCH AND NOT NAMED HEREIN; DIRECTING THAT ALL AUTHORIZED SIGNATORIES ON SAID ACCOUNTS COMPLETE AND EXECUTE SIGNATURE CARDS, FACSIMILE SIGNATURE CARD, AND RESOLUTIONS AND/OR OTHER BANK DOCUMENTS NECESSARY TO EFFECT THE IMPLEMENTATION OF THIS RESOLUTION; DIRECTING THE TOWN CLERK TO PROVIDE CERTIFIED COPY OF THIS RESOLUTION TO THE BANKING INSTITUTION NAMED HEREIN; PROVIDING AN EFFECTIVE DATE.

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

Section 1. The following persons are hereby appointed as authorized signatories on National City Bank Accounts Payable Account #2277656, Payroll Account #1565960, Revenue Account #1531509 and NOW Account #987600441:

Mayor Desca DuBois
Vice Mayor Jeffrey Carey

Finance Director Anne M. Costello
Commissioner Patricia Osterman

Section 2. All persons named herein as authorized signatories on said accounts are hereby directed to complete and execute signature cards, facsimile signature card, bank resolutions and/or other bank documents necessary to effect the implementation of this Resolution.

Section 3. The Town Clerk is hereby directed to provide a certified copy of this Resolution to the banking institution named herein.

Section 4. This Resolution shall become effective immediately upon its adoption.

TAB 4

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

Meeting Date: April 15, 2009

Agenda Item No. *Tab 4*

- | | |
|--|---|
| <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: Marina South Breakwater Increase in Contract for Rock Punching

RECOMMENDED MOTION/ACTION: Approve

Approved by Town Manager *W. Davis*

Date: *4/9/09*

Name/Title

Date of Actual Submittal

Originating Department: Town Manager	Costs: \$41,000 Funding Source: Acct. #	Attachments: Bid Sheet / Contract Agreement
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 Marina Breakwater Construction was competitively bid on August 25th 2008. There were three responses to the advertisement. Palm Beach Marine was the lowest responsible bidder with a base bid of \$331,340 plus an amount not to exceed \$41,000 for "rock punching" in order to install the piles for a grand total of \$372,340.

The agenda item which the Commission voted upon on August 27th 2008 included the base bid but the \$41,000 cap for "rock punching was inadvertently left out. Staff is requesting authorization to increase the original award amount by \$41,000 as referenced in the bid documents.

Attached please find the original agenda item and back up documentation as well as the omitted information in the contract agreement.

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

THIS AGREEMENT is dated as of the 28 day of August, 2008, and between the Town of Lake Park (hereinafter called OWNER) and Palm Beach Marine Construction Inc (hereinafter called CONTRACTOR).

Article 1. WORK.

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

- (1) *Remove two (2) 10 foot sections of an existing floating access dock at the southeastern end of the marina; install one (1) new 12 foot section. ; (2) relocate an existing wave attenuator, consisting of a 12 foot by 189 foot (2,268 SF) floating finger pier, nine concrete pilings, and a 4 foot by 24 foot (96 SF) finger pier, eight feet westward to reconnect to the existing floating access dock at the southeastern end of the marina; (3) install a 189 linear foot concrete breakwater along the the southeastern side of the marina along with an 18.5 foot section of the breakwater that terminates the structure at the north end, with 12 inch diameter flushing ports, located on 8 foot centers at a minimum of one foot below the mean low water line; and (5) install 26 batter pilings on the landward side of the proposed breakwater.*
- (2) *In addition to the items as described, the work also includes the temporary relocation and repair of the floating wave attenuator (dock) at the eastern limit of the marina. This will require the extraction of nine (9) 18" x 50 long prestressed concrete piles, three (3) timber piles, staging of the nine piles and reinstallation of the piles upon completion of the repair of the floating dock and construction of the breakwater. Installation of four (4) No Wake signs, mounted on two (2) timber piles as supplied by the OWNER; The repair of the floating wave attenuator will involve replacement of damaged dock components. The replacement components have been purchased by the Owner. These components include:*

CONCRETE UNIFLOATS ® MODULES— a 9' x 12' float module (912NLBT) for the new corner float on the main walkway to allow the attenuator section to be moved towards the shore by 8' and includes manufacture of a new 10' x 10' float module (1010NLP5) to replace the damaged section on the main walkway of the attenuator.

FABRICATED, TREATED (CCA) WOOD WALKER SYSTEM—all walers to be Southern Yellow Pine, No. 1. Including new 4" x 12" walers (approximately 40') and 2" x 12" cover boards in the shortened main walkway section with 2" x 12" and 2" x 6" cover board (approximately 60') with in the repair area on the attenuator section.

GALVANIZED STEEL HARDWARE—includes 10 each 12'-4 ½" thru-rods, 2 each 7'-6 ½" stainless steel thru-rods, 2 each ¾" x 8 ¾" machine bolts in the shortened main walkway float section, 8 each 8'-10 ½" thru-rods, 30 each 12'-1 ½" thru-rods and 8 each ¾" x 12 1/2" machine bolts installed in the repair area

GALVANIZED STEEL WELDMENTS—including 9 each 18" internal pile guides and 2 each 4' x 6' triangle frames will be supplied to replace existing or missing guides on the attenuator section and for the new location of the finger pier on the attenuator

VINYL FENDERING—Includes 100 feet of grey vinyl fendering

The Owner has purchased these items and will provide them to the successful contractor.

- (3). *In addition to the work described in items 1 and 2 above; four (4) temporary no wake signs and two (2) timber piles shall be installed approximately 25 feet from the north and south property lines at the edge of the ICWW channel. This work is authorized by a temporary construction permit issued by the Florida Fish and Wildlife Conservation Commission (FWC) No. 0710-1050-009BS.*

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

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

The Town of Lake Park Marina - South Breakwater Construction & Floating Dock Repair

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 November 30, 2008 and shall be performed under a Florida Department of Environmental Protection permit, No. 50-0140569-007. Substantial Completion requires that all construction components be installed and functional on or before December 10, 2008 and all Work be completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions on or before December 23, 2008.

- (1) Remove two (2) 10 foot sections of an existing floating access dock at the southeastern end of the marina; install one (1) new 12 foot section. ; (2) relocate an existing wave attenuator, consisting of a 12 foot by 189 foot (2,268 SF) floating finger pier, nine concrete pilings, and a 4 foot by 24 foot (96 SF) finger pier, eight feet westward to reconnect to the existing floating access dock at the southeastern end of the marina; (3) install a 189 linear foot concrete breakwater along the the southeastern side of the marina along with an 18.5 foot section of the breakwater that terminates the structure at the north end, with 12 inch diameter flushing ports, located on 8 foot centers at a minimum of one foot below the mean low water line; and (5) install 26 batter pilings on the landward side of the proposed breakwater.
- (2) In addition to the items as described, the work also includes the temporary relocation and repair of the floating wave attenuator (dock) at the eastern limit of the marina. This will require the extraction of nine (9) 18" x 50 long prestressed concrete piles, three (3) timber piles, staging of the nine piles and reinstallation of the piles upon completion of the repair of the floating dock and construction of the breakwater. Installation of four (4) No Wake signs, mounted on two (2) timber piles as supplied by the OWNER; The repair of the floating wave attenuator will involve replacement of damaged dock components. The replacement components have been purchased by the Owner. These components include:

CONCRETE UNIFLOATS ® MODULES— a 9' x 12' float module (912NLBT) for the new corner float on the main walkway to allow the attenuator section to be moved towards the shore by 8' and includes manufacture of a new 10' x10' float module (1010NLP5) to replace the damaged section on the main walkway of the attenuator.

FABRICATED, TREATED (CCA) WOOD WALER SYSTEM—all walers to be Southern Yellow Pine, No. 1. Including new 4" x 12" walers (approximately 40') and 2" x 12" cover boards in the shortened main walkway section with 2" x 12" and 2" x 6" cover board (approximately 60') with in the repair area on the attenuator section.

GALVANIZED STEEL HARDWARE—includes 10 each 12'-4 ½" thru-rods, 2 each 7'-6 ½" stainless steel thru-rods, 2 each ¾" x 8 ¾" machine bolts in the shortened main walkway float section, 8 each 8'-10 ½" thru-rods, 30 each 12'-1 ½" thru-rods and 8 each ¾" x 12 1/2" machine bolts installed in the repair area

GALVANIZED STEEL WELDMENTS—including 9 each 18" internal pile guides and 2 each 4' x 6' triangle frames will be supplied to replace existing or missing guides on the attenuator section and for the new location of the finger pier on the attenuator

VINYL FENDERING—includes 100 feet of grey vinyl fendering

The Owner has purchased these items and will provide them to the successful contractor.

- (3). In addition to the work described in items 1 and 2 above; four (4) temporary no wake signs and two (2) timber piles shall be installed approximately 25 feet from the north and south property lines at the edge of the ICWW channel. This work is authorized by a temporary construction permit issued by the Florida Fish and Wildlife Conservation Commission (FWC) No. 0710-1050-009BS.

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

Notice of Award	August 28, 2008
Receipt of Performance Bond Payment, Bond Insurance, and Agreement	Within 14 days from Notice of Award
Pre-Construction Meeting	September 16, 2008
Notice to Proceed	September 17, 2008
Start Date	On or about September 17, 2008
Substantial Completion Date	December 10, 2008
Final Completion Date	December 23, 2008

Article 4. CONTRACT PRICE.

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

4.2 For Work related to items 4.1 : a Lump Sum of:

\$Three Hundred Thirty-One Thousand Three Hundred Forty Dollars \$331,340.00
(use words) (figures)

4.3 For Work related to the specific punching of rock and as verified and approved by the Engineer:

Five Hundred Dollars per pile \$500.00 per pile,
(use words) (figures)

with a total punching cost not to exceed \$ 41,000.00.

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

Article 5. PAYMENT PROCEDURES.

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

5.1. Progress Payments: 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 Standard General Conditions.

5.1.1 Retainage. Payment will be subject to retainage held by the Owner as provided in Article 14 of the Standard General Conditions.

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

Article 6. INTEREST.

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

Article 7. CONTRACTOR'S REPRESENTATIONS.

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

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

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

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

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

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

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

Article 8. CONTRACT DOCUMENTS.

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

- 8.1. This Agreement (pages 1 to 8, inclusive).
- 8.2. Exhibits to this Agreement
- 8.3. Performance, Payment, and other Bonds, consisting of 6 pages.
- 8.4. Notice to Proceed.
- 8.5. Standard General Conditions (pages 1 to 67 inclusive).
- 8.6 Specifications bearing the title GENERAL SPECIFICATIONS, TECHNICAL SPECIFICATIONS, and ENVIRONMENTAL PROTECTION consisting of 3 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 MARINA – SOUTH BREAKWATER CONSTRUCTION & FLOATING DOCK REPAIR

[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 N/A 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). B-11 thru B-16, B-37, B-38 and B-41 thru B-43.

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 Palm Beach Marine Construction Inc.

By: *Ms. Maria Davis*

By: *Javier Quevedo*
Javier Quevedo, President

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest *James Shiphart*

Attest *[Signature]*



Address for giving notices

Addresses for giving notices

Ms. Maria Davis - Town Manager

Javier Quevedo, President

Town of Lake Park

Palm Beach Marine Construction Inc.

535 Park Ave.

1410 Forsythe Road

Lake Park, Florida 33403

West Palm Beach, FL 33405

License No. CBC018715

Agent for service of process: _____

Javier Quevedo

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

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

Meeting Date: August 27, 2008

Agenda Item No.

- | | |
|--|--|
| <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 checked="" 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 Bid for Construction of South Marina Break Water to Palm Beach Marine Construction, Inc.

RECOMMENDED MOTION/ACTION: Approve

Approved by Town Manager Virginia M. Lemly Date: 8/25/08
for Maria Santos

Name/Title	Date of Actual Submittal	
Originating Department: Town Manager	Costs: \$331,340 Funding Source: Marina Debt Service Acct. #	Attachments: Bid Tabulation Sheet Letter from Engineer Contract
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 checked="" type="checkbox"/> Town Manager <u>VML for MVD</u>
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 project was originally awarded to Vance Construction through a "piggy back" contract in which Vance Construction was the low bidder on a similar project for Palm Beach at Peanut Island. Vance Construction failed to meet the Town's schedule for commencement. The Town withdrew the award and advertised the project soliciting competitive bids.

Two firms bid on the project and Palm Beach Marine Construction, Inc. was the apparent lowest responsible bidder in the amount of \$331,340.

Staff recommends award accordingly.



Minutes
Town of Lake Park, Florida
Marina Breakwater and
Floating Dock Repair Bid 04-2008
August 25, 2008, 11:00 a.m.
Commission Chamber, Town Hall, 535 Park Avenue

The Marina Breakwater and Floating Dock Repair Bid opening was conducted on Monday, August 25, 2008 at 11:00 a.m. Present were Robert Cutcher of Cutcher and Associates, and Town Clerk Vivian Mendez Lemley.

Robert Cutcher called the meeting to order at 11:02 a.m. Robert Cutcher explained that two (2) bids were received for the project.

Company	Address	Total Bid	Bid Bond Included
Shoreline Foundation, Inc.	2781 SW 56 th Avenue Pembroke Park, 33023	\$366,936	Yes
Palm Beach Marine Construction, Inc.	1410 Forsythe Road West Palm Beach, 33405	\$331,340	Check included for \$16,556.70
AA Engineering Services, Inc.	Statement of NO Bid due to scheduling conflict		

NOTE: a FEDEX envelope from B.K. Marine Construction was received by Town Hall staff at approximately 10:00 a.m. on Monday August 25, 2008. The envelope was delivered to the wrong department, and therefore was not opened at the formal bid opening. The error was discovered at approximately 11:00 a.m. on Tuesday, August 26, 2008. The sealed bid from B. K. Marine Construction was opened at that time. The total bid was \$424,877 and included a bid bond.

A review of the bid packages will be conducted to ensure all the required documentation are included. The Town Commission will be given a recommendation for approval on Wednesday, August 27, 2008 at 5:30 p.m..

Robert Cutcher thanked everyone for being present.

ADJOURNMENT:

With no other Bids, the opening of Bid 04-2008 was closed at 11:05 a.m.


Town Clerk Vivian Mendez Lemley

FLORIDA

Cutcher & Associates, Inc.
Coastal Engineers

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

752 North US Hwy 1.
Tequesta, FL 33469

August 25, 2008

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

RE: Lake Park Harbor Marina South Breakwater and Floating Dock Repair- Recommendation of Project Award

Maria:

The bid opening for the marina breakwater was held today at 11:00 AM. The apparent low bidder was Palm Beach Marina Construction Inc. with a bid value of \$331,340.

As you may remember, the engineer's cost estimate for this projects, dated July 29, 2008 was \$411,500. The bid value of \$331,340 is \$80,160 less than the engineer's cost estimate. Although this is somewhat low for this project, it is within an acceptable range to complete the work successfully.

The bid schedule and other documentation was accompanied by a cashiers check for \$16,565.70 which equals 5% of the total bid price as required in item 11 of the EJCDC. This cashier's check effectively serves as the bid bond.

I have reviewed the documents accompanying the bid proposal and find that Palm Beach Marine Construction, Inc. has satisfactorily met the requirements of the bid documents.

Palm Beach Marine Construction, Inc. has previously completed several projects in which Cutcher & Associates was the engineer of record. These projects were constructed in accordance with the plans and specifications without controversy.

Palm Beach Marine Construction has indicated via an email that they are available to begin work, the second week of September 2008. This is consistent with the critical path items that we listed in the bid schedule.

Based on the value of the bid, the past performance of the bidder and the availability of equipment and manpower as based on the bid schedules (1) and (2), I recommend the project be awarded to Palm Beach Marine Construction, Inc.

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

Sincerely,

Robert Cutcher

Robert Cutcher, P.E.

**STANDARD GENERAL
CONDITIONS OF THE
CONSTRUCTION
DOCUMENT**

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



ASCE American Society
of Civil Engineers

The logo for the National Society of Professional Engineers (NSPE) is a circular emblem with a stylized "P/E" inside. To its right, the text reads "National Society of Professional Engineers" and "Professional Engineers In Private Practice".
**National Society of
Professional Engineers**
Professional Engineers In Private Practice

AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

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

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

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 individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

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

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

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

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

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

- A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:
1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
 2. is of such a nature as to require a change in the Contract Documents; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

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

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and

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

- c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

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

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

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

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

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

4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

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

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

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained;

- a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
 2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
 4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
 5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
 6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors,

members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's

interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
 - 1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
2. *Substitute Items:*
- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
 - b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
 - c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
 - d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

- c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be

required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner,

Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

- 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
- 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- 3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought

by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and

shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is

required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

- a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures:

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner,
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 6. any inspection, test, or approval by others; or
 7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
1. written notice thereof will be given to Contractor prior to starting any such other work; and
 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibilities will be provided.

- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or

continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not

exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data

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:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of

said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, 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 (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or

- neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
 2. correct such defective Work; or
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments:*

- 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an

Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or

- 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.

14.03 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before

final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying

documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due:

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 Final Completion Delayed

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
 1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when

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. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

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

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

TAB 5

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

Meeting Date: April 15, 2009

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: 2009 DOJ Edward Byrne Memorial JAG Grant

RECOMMENDED MOTION/ACTION: Approve Grant Submission

Approved by Town Manager W. J. Davis **Date:** 4/9/09

Virginia Martin, Grants Writer
Name/Title

4/19/2009
Date of Actual Submittal

Originating Department: Grants	Costs: \$ no match required Funding Source: Department of Justice ARRA Acct. #	Attachments: 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:

The Town of Lake Park has a grant allocation from the US Department of Justice of \$42,416 based on crime statistics from this community. A resolution of the Town Commission is required to submit this grant.

One of the ways this funding can be used is for "prevention and technology programs." This special allocation will be used to install security cameras at 9th St. and Park Avenue. We are currently getting information on the number and type of cameras that will be available for that price.

RESOLUTION NO. 17-04-09

**A RESOLUTION OF THE TOWN COMMISSION OF
THE TOWN OF LAKE PARK, FLORIDA
AUTHORIZING THE TOWN MANAGER TO
SUBMIT A GRANT APPLICATION FOR THE 2009
AMERICAN RECOVERY AND REINVESTMENT
ACT, U.S. DEPARTMENT OF JUSTICE'S BYRNE
JUSTICE ASSISTANCE 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 desires to implement strategies that will prevent crime and criminal activity in the community; and

WHEREAS, the U.S. Department of Justice has made \$42,416 available to the Town to use in crime prevention and amelioration; and

WHEREAS, using the program-qualified strategy of 'prevention and technology' has the greatest potential for long range impact; and

WHEREAS, the use of street cameras to supplement police patrols and presence meets both the strategic needs of the community and the funding proposal guidelines.

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

SECTION 1. The Town Commission hereby authorizes the submission of the grant application to the US Department of Justice.

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

TAB 6

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

Meeting Date: April 15, 2009

Agenda Item No. Tab 6

PUBLIC HEARING

RESOLUTION

Public Hearing

DISCUSSION

ORDINANCE ON FIRST READING

BID/RFP AWARD

ORDINANCE ON SECOND READING

CONSENT AGENDA

GENERAL APPROVAL OF ITEM

Other:

SUBJECT: Purchasing Policies and Procedures

RECOMMENDED MOTION/ACTION: Adoption

Approved by Town Manager *H. Davis*

Date: 4/9/09

Virginia Martin, Grants Writer
Name/Title

April 7, 2009
Date of Actual Submittal

Originating Department: Grants	Costs: \$ N/A Funding Source: Acct. #	Attachments: Ordinance
Department Review: <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development _____ <input checked="" type="checkbox"/> Finance <u>AMC 4/7/09</u>	<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 checked="" 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: The Town is working to get its Local Area Program (LAP) Certification for the Florida Department of Transportation and the Federal Highway Administration in order to take advantage of the American Recovery & Reinvestment Act (ARRA). At this time, we have an FDOT grant of \$330,500 for the Park Avenue Project from 7th Street to Federal Highway. Lap Certification is also required for this grant. One of the areas we have to examine for this Certification is our Purchasing Policies & Procedures. The Ordinance is the result of incorporating the necessary revisions in consultation with the Town Attorney and the Finance Director.

ORDINANCE NO. 07-2009

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING THE TOWN CODE AT CHAPTER 2, ARTICLE V, DIVISION 2, ENTITLED "PURCHASING" TO AMEND SECTION 2-243 ENTITLED "REQUIREMENT OF GOOD FAITH"; SECTION 2-245 ENTITLED "DEFINITIONS"; SECTION 2-247 ENTITLED "PROCUREMENT METHODS"; SECTION 2-248 ENTITLED "COMPETITIVE SEALED BID PROCESS"; SECTION 2-249 ENTITLED "COMPETITIVE SEALED PROPOSAL PROCESS"; SECTION 2-250 ENTITLED "ALTERNATIVE SOURCE ELECTION"; AND SECTION 2-252 ENTITLED "PROTESTED SOLICITATIONS AND AWARDS"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, the Town has codified a procedure governing the procurement of goods and services, in which the Town has established procedures and the methods of procurements to be used when the Town desires to purchase goods and services; and

WHEREAS, it is generally in the best interest of the Town to use competitive procurement methods in order to obtain the best price and maximize the value of public funds in procurements; and

WHEREAS, establishing procurement methods and procedures for Town purchases, will provide for the fair and equitable treatment of persons and entities involved in purchasing by the Town, and establish safeguards for maintaining a procurement system of quality and integrity; and

WHEREAS, Town staff has recommended to the Town Commission that it amend Chapter 2, Article V, Division 2, Sections 2-243, 2-245, 2-247, 2-248, 2-249, 2-250, and 2-252; and

WHEREAS, the Town Commission has reviewed the recommendations of Town staff, and has determined that amending Chapter 2, Article V, Division 2, Sections 2-243, 2-245, 2-247, 2-248, 2-249, 2-250, and 2-252 of the Town's Code of Ordinances is necessary to further the public health, safety and welfare.

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

Section 1. The whereas clauses are incorporated herein as true and correct, and are the findings of fact and conclusions of law of the Town Commission.

Section 2. Chapter 2, Article V, Division 2, Sections 2-243, 2-245, 2-247, 2-248, 2-249, 2-250, and 2-252 of the Town's Code of Ordinances are hereby amended to read as follows:

DIVISION 2. PURCHASING

Sec. 2-241. General purpose.

The purpose of this division is to meet the following objectives:

- (1) Establish policies governing all purchases and contracts;
- (2) Encourage and promote fair and equal opportunity for all persons doing business with the Town;
- (3) Obtain goods and services of satisfactory quality and quantity at reasonable cost for the Town;
- (4) Permit the continued development of procurement policies and procedures through the promulgation of administrative regulations and internal procedures of purchasing and contracts;
- (5) Foster effective broad-based competition within the free enterprise system; and

(6) Provide safeguards for the maintenance of a procurement system of quality and integrity.

(Ord. No. 9-1996, § II, 9-18-1996; Ord. No. 1-2000, § I, 2-2-2000; Code 1978, § 2-96)

Sec. 2-242. Supplementary general principles of law applicable.

(a) *Compliance with federal and state law.* The Town shall comply with all applicable federal and state laws.

(b) *Principles of law and equity.* The principles of law and equity, including the Uniform Commercial Code of this state (F.S. chs. 670--680), laws relative to ethics, and laws relative to contract, agency, fraud, misrepresentation, duress, coercion, mistake or bankruptcy shall supplement the provisions of this division.

(c) *Access to procurement information.* Procurement information shall be a public record to the extent provided in F.S. ch. 119, and shall be available to the public as provided by law.

(d) *Preference to proposals for goods and services.* The Town shall have the option to give preference to proposals for goods and services received from vendors whose businesses are based within the Town where price, quality and other relative factors are comparable.

(Ord. No. 9-1996, § II, 9-18-1996; Ord. No. 1-2000, § I, 2-2-2000; Code 1978, § 2-97)

Sec. 2-243. Requirement of good faith.

The provisions of this division require all parties involved in the development, performance or administration of purchasing contracts of the Town Commission to act in good faith.

The Town Commission recognizes that fair and open competition is a basic tenant of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are processed. The purchase of all commodities and services will be in accordance with Town policy, codes, regulations and all applicable State Statutes

(Ord. No. 9-1996, § II, 9-18-1996; Ord. No. 1-2000, § I, 2-2-2000; Code 1978, § 2-98)

Sec. 2-244. Application and exclusions.

(a) The provisions of this division shall apply to every purchase/procurement by the Town, irrespective of their fund source, including state and federal assistance monies, except as otherwise specified by law. Items in this category shall be paid for through a request for disbursement. The provisions of this division shall not apply to:

(1) Agreements between the Town Commission and nonprofit organizations or governmental entities including the procurement, transfer, sale or exchange of goods and/or services.

- (2) Procurement of dues and memberships in trade or professional organizations; subscriptions to periodicals; title insurance for real property; court reporter services; water, sewer and electrical utility services; copyrighted materials; patented materials; and fees and costs of job-related seminars and training.
- (3) Real property.
- (4) Legal services, including attorney, paralegal, expert witness, appraisal, or mediator services.
- (5) Auditing services.
- (6) Lectures by individuals.
- (7) Goods and/or services given, or accepted by the Town via grant, gift or bequest.
- (8) Goods purchased with petty cash in accordance with established Town procedures.
- (9) Goods and/or services purchased under contract with the federal, state or any other municipal government or government agency or political subdivision providing the vendor extends the same terms and conditions of the contract to the Town.
- (10) Items purchased for resale to the general public.
- (11) Permits (payable to governmental entities).
- (12) Approved travel expenses.
- (13) Legal settlements. (However, any legal settlements over the amount of \$5,000.00 shall be approved by the Town Commission in a public meeting.)
- (14) Insurance.
- (15) Health services.
- (16) Conferences and travel.
- (17) Utilities bills.
- (18) Normal recurring disbursements not for the purpose of acquiring goods and services.

(b) The exclusions listed above do not preclude the town from procuring such goods and/or services using the procedures listed herein this division.

(c) The minimum requirements of this division do not preclude additional procedures from being taken as deemed appropriate by the Town Manager or Town staff.

(Ord. No. 9-1996, § II, 9-18-1996; Ord. No. 1-2000, § I, 2-2-2000; Code 1978, § 2-99)

State law references: Proposed purchase of real property by municipality, F.S. § 166.045.

Sec. 2-245. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~Agreement means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing, usage of trade, or course of performance. Whether an agreement has legal consequences is determined by the provisions of the Uniform Commercial Code of the state (F.S. chs. 670-680), if applicable, otherwise, by the law of contracts.~~

AGREEMENT: The written agreement between the Town of Lake Park and vendor covering the work to be performed; other contract documents are incorporated into or referenced in the agreement and made a part thereof as provided therein.

~~AMENDMENT: means~~ A modification, deletion or addition to an executed contract by means of a formally executed document signed by both parties.

~~BID: means~~ A formal written price offer by a vendor to the Town to furnish specific goods and/or services in response to an invitation to bid. ~~or a multistop bidding procedure.~~

~~Bid award means award of a bid for which funds have lawfully been appropriated by the town commission.~~

BID AWARD: A contract and/or purchase order to the selected vendor to provide specific commodities and/or services to the Town for which funds have been appropriated by the Town of Lake Park Commission.

BID CRITERIA: The basis upon which the Town will rely to determine acceptability of a bid or proposal, as stated in the bid or the proposal, including, but not limited to, inspection, testing, quality, workmanship, delivery, price, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total cost or life cycle costs.

~~BLANKET PURCHASE ORDER: means~~ A purchase order under which vendor agrees to provide goods and/or services to a purchaser on a demand basis.; ~~the purchase order generally establishes a maximum dollar limit, and the period covered, with no specified quantities; shipments are to be made as required by the purchaser. Some blanket purchase orders may establish the price, terms and/or conditions of purchase.~~

~~Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.~~

~~Capital improvement project or project means any public improvement which the town undertakes, including the construction or reconstruction in whole or in part, of any building, road, highway, street improvements, physical plant, structure, or facility necessary in carrying out the functions of the town government. The term does not include any routine maintenance, operation or repair of existing structures, buildings or real property.~~

CERTIFICATE OF CONTRACT COMPLETION: A form which indicates that a project has been satisfactorily completed and the contractor has paid all labor, materials and other charges against the project in accordance with the terms of the contract.

CERTIFICATE OF INSURANCE: A document which shows proof of insurance, coverage, types and amounts.

~~Change order means a written modification to a contract or purchase order, which normally revises the quantities or scope of services, and may include an extension of time to complete the contract.~~

CHANGE ORDER: A written instrument issued on or after the effective date of the formal written contract or purchase order which, when duly executed by the Town and contractor, amends the contract documents to provide for a change in the work or in the provisions of the contract documents, or changes in contract price or contract time, or any combination thereof. A change order to a purchase order must be processed by the Town Manager for all changes that affect the original dollar amount by an increase of ten (10%) percent or more. Depending on the size of the contract, the change order may require Commission approval.

COMMODITIES: Any tangible personal property other than services or real property.

~~Construction means the process, usually requiring the professional services an architect and/or engineer, of building, altering, repairing, improving, or demolishing any structure or building, or other improvements of any kind to any real property.~~

~~Consultant services means any narrow discipline wherein a known practitioner has, through education and experience, developed expert advisory and programming skills as a vocation; any service performed primarily by vocational personnel which requires the analysis or certification of a professional before the services are acceptable to the user of the service; or any other advisory, study, or programming activity. The finance director may determine in writing that the level of skills and/or creativity of those services are defined and prescribed under F.S. § 287.055.~~

CONSULTANTS COMPETITIVE NEGOTIATION ACT (CCNA): Acquisitions of architectural, engineering, landscape architectural or surveying and mapping services. (Florida Statute, section 287:055).

CONSULTING SERVICES: All other services that do not fall under the definition of professional services for the Consultant Competitive Negotiation Act (CCNA).

CONTINUING SERVICES CONTRACT: A continuing contract to retain the services of a consultant(s). The authorization for performance of services by the consultant shall be in written form issued and executed by the Town and signed by the consultant.

~~Contract means (i) a deliberate verbal or written agreement between two or more competent parties to perform or not perform a specific act or acts, (ii) any type of agreement regardless of what such agreement is called for the procurement or disposal of goods, services or construction; usually for exchanging goods or services for money or other consideration.~~

CONTRACT: A deliberate verbal or written agreement between two or more competent parties to perform or not perform a specific act or acts, or any type of agreement (regardless of what it is called) for the procurement or disposal of goods, services or construction in exchange for money or other consideration. An authorized purchase order is a contract even though it is only signed by the Town Manager, Finance Director or designee.

~~Contractor means any person having a contract with the town commission.~~

DEBARMENT: means The exclusion, for cause, of a vendor or contractor from bidding and/or receiving a contract to do business with the Town.

DESIGN-BUILD: ~~services means~~ The requirement for which a single contract with a design-build firm is entered into for the design and construction of a capital improvement construction project.

DESIGNEE: means A duly authorized representative of a person, organization, or agency holding a superior position.

DISCRIMINATION: Any vendor who has been placed on the discrimination vendor list as defined by Florida Statute Section 287.134, shall not be able to transact business with the Town to the extent as specified in Florida Statute 287.134 (2) (b).

~~Emergency purchases means a procurement made in response to a requirement when the delay incident to complying with all governing rules, regulations, and/or procedures would be detrimental to the health, safety and welfare of the town and/or the town's citizens.~~

EMERGENCY PURCHASE: Procurement made in response to certain emergencies or when the delay caused by complying with all governing rules, regulations, and/or procedures would be detrimental to the health, safety and welfare of the Town and/or its citizens or would create a hardship on the reasonable conduct of business in a timely fashion. Lack of planning, or funding surpluses, do not justify emergency purchases.

FIELD PURCHASE ORDER: means A purchase of \$500.00 or less, not requiring a purchase requisition or regular purchase order.

***EXCEPTION:** \$1,500.00 or less for Public Works FPO: An exception is made for the purchase limits for Public Works Department (only) due to the nature of purchases such as construction materials, mechanical parts, landscaping materials, irrigation system parts etc. on a routine basis. All other requirements for bid solicitation and reporting remain the same.

FORMAL CONTRACT: Represents a legal obligation on the part of each party to the formal contract, which results from both parties' signatures being affixed to the contract documents and some additional obligation imposed by law.

~~*Goods* means any tangible personal property other than services or real property.~~

HEALTH SERVICES: means The procurement of any medical functions not covered by insurance, including but not limited to pre-employment physicals, random drug screening, medical consultations, and the contractual employment of the medical director for the county fire department.

~~*Invitation to bid (ITB)* means the solicitation document and all attachments and addendums used for competitive sealed bidding for the procurement of construction, goods and/or services.~~

INVITATION FOR BIDS: All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids for the procurement of construction, commodities, and/or services.

~~*Item* means a single, separate unit, article, product, material or service.~~

LETTER OF RENEWAL: A document, generated by either party, to renew or extend the contract in accordance with the terms of the original contract. Contract renewals will be requested by the department head and prepared and approved by the Town Manager, Finance Director or designee and/or Town Commission where applicable per contract documents.

~~*Mandatory formal procurement threshold dollar bid amount* means the threshold dollar amount established as policy by the town commission when at and above which the formal competitive sealed bid or proposal processes shall be used~~

MANDATORY BID AMOUNT: means The threshold dollar amount established as policy by the Town Commission at and above which the formal competitive sealed bid process shall be used, except as otherwise provided herein. The mandatory bid amount threshold shall be is \$25,000.00 as established by the Town Commission.

~~**MINORITY BUSINESS ENTERPRISES:** means Any small business concern, which is defined as a minority business enterprise pursuant to Section 288.703, Fla. Stat., as amended from time to time, which is organized to engage in commercial transactions, which is domiciled in the state, and which is at least 51 percent owned by minority persons who are members of an insular group that is of a particular racial, ethnic or gender makeup or national origin, which has been subjected historically to disparate treatment due to identification in and with that group resulting in an under representation of commercial enterprises under the group's control, and where management and daily operations are controlled by such persons. A minority business enterprise~~

~~may primarily involve the practice of a profession. Ownership by a minority person does not include ownership, which is the result of a transfer from a non-minority person within a related immediate family group if the combined total net assessed value of all members of such family group exceeds \$1,000,000.00. For purposes of this subsection, the term "related immediate family group" means one or more children under 16 years of age, and a parent of such children or the spouse of such parent residing in the same house or living unit.~~

~~Minority person means a lawful permanent resident of the state who is:~~

~~Minority person means a lawful permanent resident of the state who is:~~

- ~~(1) An African American, who is a person having origins in any of the racial groups of the African Diaspora.~~
- ~~(2) A Hispanic American, who is a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America or the Caribbean regardless of race.~~
- ~~(3) An Asian American, who is a person having origins in any of the original peoples of the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands prior to 1778.~~
- ~~(4) A Native American, who is a person who has origins in any of the Indian Tribes of North America prior to 1835, upon presentation of proper documentation thereof.~~
- ~~(5) An American Woman.~~

~~MINORITY PERSON shall have the definition be defined as ascribed by Section 288.703, Fla. Stat., as amended from time to time. means a lawful permanent resident of the state who is:~~

NON-RESPONSIVE BIDDER, PROPOSER, OR RESPONDENT: Any vendor responding to an Invitation to Bid, Request for Proposals, Request for Statement of Qualifications who does not submit the required signed documents or submits incomplete requested documents and/or information.

NOTICE TO PROCEED: A written notification from the Town Manager or Finance Director or designee to the contractor to establish commencement of the contractor's responsibilities under the provisions of the contract.

PERSON: means Any business, individual, union, committee, club, or organization, or group of individuals.

~~*Procurement* means buying, purchasing, renting, leasing or otherwise acquiring any goods and/or services for public purposes in accordance with the law, rules, regulations and procedures intended to provide for the economic expenditure of public funds. The term "procurement" includes but is not limited to all functions which pertain to the obtaining of any supplies, materials, equipment and/or services including construction projects and capital improvement projects, as defined herein, required by any department or agency of town government regardless of the source of funds or for which payment is made from town funds. For the purpose of this division, the term "procurement" excludes those items set forth in section 2-244(a).~~

PROCUREMENT: Buying, purchasing, renting, leasing or otherwise acquiring any commodities and/or services for public purposes in accordance with the law, rules, regulations and procedure intended to provide for the economic expenditure of public funds. It includes, but is not limited to, all functions which pertain to the obtaining of any supplies, materials, equipment and/or services including construction projects and capital improvement projects, as defined herein, required by the Town.

~~*Professional services* means architectural, engineering, landscape architectural, and registered land surveying services as defined and prescribed under F.S. § 287.055.~~

PROFESSIONAL SERVICES (PS): A solicitation for responses for CCNA services which include architectural, engineering, landscape architectural, and registered land surveying and mapping services as defined and prescribed under Florida Statutes 287.055.

PROJECT MANAGER: A person designated by the Town Manager to ensure compliance with Town codes, resolutions, procedures, and specification for contracts which he/she originates. The Project Manager, along with the Department Head is held accountable for contract compliance.

~~*Proposal* means an executed formal document submitted by an offerer to the town stating the goods and/or service offered to satisfy the need as requested in the request for proposal or request for information.~~

PROPOSAL: An executed formal document submitted by a vendor to the Town stating the goods and/or service offered to satisfy the need as described in a Request for Proposals (RFP), Request for Statement of Qualifications (RFQ) or a Request for Information (RFI).

PUBLIC ENTITY CRIME: Any vendor who has been convicted of a public entity crime as defined by Florida Statute Section 287.133, shall not be able to transact business with the Town to the extent as specified in Florida Statute 287.133 (2) (a).

PUBLIC NOTICE: The required notification or advertisement of an invitation to bid, request for proposal, or other competitive solicitation provided for in this division, to be given to prospective vendors for a reasonable/required period of time as determined by the Town Manager, which shall, at a minimum, include: (i) direct notice to prospective vendors on an applicable bidders list maintained by the finance department; (ii) posting public notice on the Town website; and (iii) notice in a newspaper of general circulation when required by applicable law. The public notice shall describe the goods or services sought, and state the date, time and place of the bid/proposal/solicitation opening.

PUBLIC RECORD: Upon award recommendation or ten (10) days after opening, Invitation to Bid, Request for Proposals, Request for Statement of Qualifications and Request for Information, becomes public records and shall be subject to public disclosure consistent with Chapter 119, Florida State Statutes.

~~*Purchase order* means the town's document used to authorize a purchase transaction with a vendor. A purchase order should contain provisions for goods and/or services ordered, applicable terms as to payment, discounts, date of performance, transportation and other factors or conditions relating to the transaction. Acceptance of a purchase order by a vendor shall constitute a contract, except instances in which a purchase order is used only as an internal encumbrance document.~~

PURCHASE ORDER: The Town's document used to authorize a purchase transaction with a vendor, which contains provisions and/or descriptions for goods and/or services ordered. Acceptance of a valid purchase order by a vendor shall constitute a legally binding contract.

~~*Purchase* means the same as procurement, as defined herein.~~

QUOTATION: means Any oral or written informal offer by a vendor to the Town to furnish specific goods and/or services at a stated price.

REQUEST FOR INFORMATION (RFI): A solicitation for response from interested and prospective vendors/contractors to provide information to determine specifications, qualifications and/or capabilities to satisfy a need rather than a firm specification and in which the respondent may be given latitude in order to develop a product and/or service which will fulfill the need. Upon receipt of responses to the RFI, the Town may develop specifications for an Invitation for Bid or criteria for a Request for Proposal, either of which may be issued to qualified proposers who submitted responses to the RFI.

~~**REQUEST FOR LETTERS OF INTEREST:** A solicitation of responses from interested and prospective vendors/contractors to provide information and/or specifications in order to determine qualifications and/or capabilities to satisfy a need rather than a firm specification, and in which the vendor respondent may be given latitude in order to develop a product and/or service which will fulfill the need. Upon receipt of responses to the request for letters of interest, the town may develop specifications for an invitation to bid or criteria for a request for proposal, either of which may be issued to qualified proposers who submitted responses to the request for letters of interest.~~

REQUEST FOR PROPOSAL (RFP): means A solicitation of responses for a good-commodities and/or services for which the scope of work, specifications or contractual terms and conditions cannot reasonably be closely defined. Evaluation of a proposal is based on prior established criteria wherein the RFP shall state the relative importance of price and other evaluation factors.

REQUEST FOR QUALIFICATION (RFO): Solicitation for Statement of Qualifications pursuant to Florida Statutes, section 287:055, known as the Consultants Competitive Negotiation Act (CCNA).

~~*Requisition* means the document specifying the items a cost center is requesting to purchase. The requisition document should be completed by the appropriate department head, and include the proper account numbers as well as the proper number of oral or written price quotes required by this division.~~

REQUISITION: An internal document generated by the requesting department and forwarded to the Town Manager or Finance Director requesting purchase of commodities and/or services.

~~*Responsible bidder* means a bidder who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability, which will assure good faith performance.~~

~~*Responsible proposer* means a proposer who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability, which will assure good faith performance.~~

RESPONSIBLE BIDDER, PROPOSER, OR RESPONDENT: A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, ability, reliability, capacity, facilities, equipment, financial resources and credit which will assure good faith performance.

RESPONSIVE BID: A bid submitted by a responsive and responsible bidder, which conforms in all material respects to the invitation for bids.

RESPONSIVE BIDDER: A bidder who has submitted a bid, which conforms in all material respects to the invitation for bids.

RESPONSIVE PROPOSAL: A proposal submitted by a responsive and responsible proposer, which conforms in all material respects to the request for proposal.

RESPONSIVE PROPOSER: A proposer who has submitted a proposal, which at a minimum conforms in all material respects to the request for proposal.

SALES TAX RECOVERY: An option, resulting from the Town's tax exempt status, reserved by the Town to purchase all, any, or none of the materials and equipment included in each contract agreement directly from the manufacturer or supplier.

SOLE SOURCE: The only existing source of an item which meets the needs of the user department as determined and documented by a reasonable analysis of the marketplace. If in the process of a public bid, only one response is received, the Town Manager or Finance Director may proceed as a Sole Source Purchase.

SPECIFICATION: A concise statement of terms, conditions and a set of requirements to be satisfied by a product, material, service, or process used in an Invitation for Bids, Request for Proposals, and Request for Statement of Qualifications. It may include a description of any requirement for inspecting, testing, or preparing a commodity, service, or construction item for delivery.

SURETY BONDS: A document from the contractor, which is issued to guarantee that an obligation will be fulfilled. The nature of the obligation determines the type of bond that will be issued. The types of surety bonds include: license and permit bonds, public official bonds, bid, performance, labor, material and payment bonds.

SUSPENSION: The temporary debarment of a vendor for a period not to exceed three (3) years.

TOWN: When herein referenced refers to the Town of Lake Park.

WARRANTY: The representation, either expressed or implied, that a certain fact regarding the subject matter of a contract is presently true or will be true.

(Ord. No. 9-1996, § II, 9-18-1996; Ord. No. 1-2000, § I, 2-2-2000; Code 1978, § 2-100)

Cross references: Definitions generally, § 1-2.

Sec. 2-246. Organization.

The Finance Department shall be the agency through which the town will conduct all of its procurement and contracting for all supplies, material, equipment, contractual services, professional and consultant services, construction and/or combination of goods and services. A properly completed purchase requisition should be completed and approved by the appropriate department head prior to submission to the Finance Department. When a field purchase order is used, a requisition need not be completed but the field purchase order should be approved by the Department Head, and a copy of the field purchase order promptly sent to the Finance Department.

(Ord. No. 9-1996, § II, 9-18-1996; Ord. No. 1-2000, § I, 2-2-2000; Code 1978, § 2-101)

Sec. 2-247. Procurement methods.

(a) *Twenty-five thousand dollars or more estimated cost:* Any purchase with an estimated cost of \$25,000.00 or more except in an emergency situation (as determined by the Town Manager), or when involving single-source commodities (as determined by the Finance Director or Town Manager) must have an invitation to bid or request for proposal formally advertised in a newspaper of general circulation in the county, ~~28~~ 21 days prior to the date set for submittal of bids or proposals. All purchases with an estimated cost of \$25,000 or more shall require Town Commission approval.

(b) *Ten ~~Five~~-thousand dollars through \$24,999.99.* All purchases having a value between ~~Five~~ Ten thousand dollars (\$10,000.00) through \$24,999.99 must have at least three written quotes from vendors. The results should be summarized by the cost center procuring the commodity or service, and the purchase reviewed by the Finance Director, and approved by the Town Manager. Three ~~Four~~ quotes are not required in emergency situations or when involving single-source commodities, as determined by the Finance Director or Town Manager. All purchases with an estimated cost of \$10,000.00 or more shall require Town Commission approval.

(c) *Five hundred dollars through ~~\$4,999.99~~ \$9,999.99.* All purchases having a value over \$500.00 through ~~\$4,999.99~~ \$9,999.99 must have at least three phone quotes documented by the procuring department. The documentation should include the vendor name, phone number, contact person, and quoted price. The Town Manager, Finance Director or the designee's assistant must approve all purchases between the amounts of \$500.00 and ~~\$4,999.99~~ \$9,999.99. Appropriate quotes should be submitted to the Finance Department with the purchase requisition.

(d) *One cent through \$499.99.* All purchases having a value between \$0.01 and \$499.99 may be made using a field purchase order (FPO). It is the responsibility of the procuring department to ensure that items are obtained at a competitive price, and that the department has not exceeded the line-item budgetary appropriation for the items purchased. The procuring department shall not use field purchase orders to make more than one purchase of the same item within five business days if the total cost is more than \$499.99.

EXCEPTION: *One cent through \$1,500.00. Public Works FPO:* An exception is made for the purchase limits for Public Works Department (only) due to the nature of purchases such as construction materials, mechanical parts, landscaping materials, irrigation system parts etc. on a routine basis. All other requirements for bid solicitation and reporting remain the same.

(e) *Review of purchases.* The Finance Department may review ~~such~~ purchases from time to time to ~~validate the integrity of the purchase. One copy of each field purchase order shall be immediately forwarded to the finance department by the procuring department after completion of such field purchase order.~~ ensure the validity of the purchase, including but not limited to, a confirmation of the need for the items purchased, verification of the department's report and its supporting documentation, the adherence to these purchasing procedures, and the overall integrity of the process used. One copy of each field purchase order shall be immediately forwarded to the Finance Department by the user ~~procuring department after completion~~ consummation of the purchase. ~~pursuant to the completion of such field purchase order.~~

(f) Aggregate Annual Amounts: All references to bids and purchases and amounts established for bid parameters shall be deemed to be aggregate annual amounts, to the extent feasibly by each department. The total annual expected value of the purchase is to be used to determine the type of bid process to be applied. There shall be no artificial division of orders, piecemeal orders or other plans of order diversion or pyramiding to avoid said requirement.

(g) Unauthorized Purchases Prohibited: Unless specifically identified and approved it shall be prohibited for any Town employee to order the purchase of any goods or services or make a contract other than through the Finance Director unless otherwise provided herein. Any purchase or contract made contrary to the provisions hereof are not authorized and shall not be binding upon the Town, even though said goods and/or services are used or consumed in support of the effort of the Town.

(Ord. No. 9-1996, § II, 9-18-1996; Ord. No. 1-2000, § I, 2-2-2000; Code 1978, § 2-102)

Sec. 2-248. Competitive sealed bid process.

(a) **THRESHOLD AMOUNT.** The threshold dollar amount established as policy by the Town Commission at and above which the competitive sealed bid process shall be used, except as otherwise provided herein shall be ~~\$10,000.00~~ \$25,000.00.

(b) ~~INVITATION TO~~ FOR BIDS. ~~An invitation to bid shall be issued which shall include the specifications, scope of service, and all contractual terms and conditions applicable to the procurement.~~ bid and shall set forth the evaluation criteria to be used to determine the award.

(c) **PUBLICATION OF NOTICE.** Public notice of the invitation to bid shall be published in a newspaper of general circulation in the county for 21 days a reasonable period prior to bid opening submittal deadline, and posted on the Town of Lake Park web site. Bid Notice shall be sent directly to prospective bidders that are on the vendor file relevant to the specific commodity, ~~and shall be mailed to all parties on any particular vendor list.~~ The public notice shall state the place, date, and time of bid opening.

(1) For Bids estimated to be from twenty five thousand dollars (\$25,000.00) or more and expected to be under two hundred thousand dollars (\$200,000.00), the public notice of the invitation to Bid shall provide a minimum of ~~ten (10)~~ 21 days for submission of bids.

(2) For bids estimated to be over two hundred thousand dollars (\$200,000.00) public notice of the Invitation to Bid shall provide at least thirty (30) days for submission of bids unless determined by the town manager or finance director to not be in the best interest of the Town.

BIDS GENERALLY. ~~Bids must be received no later than the time and date and at the location specified for bid opening in the invitation to bid. No bids shall be accepted after such time and date or at any other location than specified; any bids received later or at any other location than specified shall be returned unopened to the bidder. It shall be the bidders' sole responsibility to ensure that their bid reaches the specified place at the specified time. Bidders shall be allowed to withdraw their bids at any time prior to bid opening.~~

(d) **BID SUBMISSION:** Bids must be received, in a sealed envelope, no later than the time and date and at the location specified. Any bids received later or at any other location than specified

will not be accepted and shall be returned unopened to the bidder. It shall be the bidders' sole responsibility to ensure that their bid reaches the specified place for receipt of bids by the specified time. The Town shall bear no responsibility for any failure of the U.S. Postal Service, other courier service or Town employee to successfully deliver a bid to the designated delivery location. It is noted that bidders shall be allowed to withdraw their bids at any time prior to bid opening.

- (1) All bids and accompanying documentation received from bidders in response to an invitation to bid, become the property of the Town, and will not be returned to the bidders. In the event of a contract award, all documentation produced as part of the contract shall become the exclusive property of the Town.

(e) BID ACCEPTANCE AND EVALUATION: Bids shall be accepted from all qualified vendors except as otherwise provided herein and shall be evaluated based on the requirements set forth in the Invitation for Bid. Unsolicited alternates will not be considered.

The Town may, at any time and in its sole discretion, reject all bids and/or re-advertise for bids using the same or different specifications and terms and conditions.

(f) BID OPENING. Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place specified in the invitation to bid. At the time of public opening, the Town Clerk or designee will officiate at all public bid opening of sealed bids, and shall be announced and recorded the name of each bidder, the amount of each bid and such other relevant information as the Town Manager deems appropriate.

(g) PUBLIC RECORD: Upon award recommendation or ten (10) days after opening, bids become public records and shall be subject to public disclosure consistent with Chapter 119, Florida State Statutes.

(h) CANCELLING OR POSTPONING INVITATION TO BID. The Town Manager or Finance Director may, prior to bid opening, elect to cancel an invitation to bid or postpone the date and/or time of bid submission or opening. In such situations, an addendum will be issued.

~~(e) Required information; errors; responsiveness.~~

~~(1) The following shall govern the correction of information submitted in a bid when that information is a determinant to the responsiveness of the bid a material factor in determining the responsiveness of the bid:~~

~~a. Errors in the extension of unit prices stated in a bid or in multiplication, division, addition, or subtraction in a bid may be corrected by the finance director or designee prior to award. In such cases, the unit prices bid shall not be changed. When bidders quote in words and in figures on items on the bid form, and the words and figures do not agree, the words shall govern and the figures shall be disregarded.~~

~~b. No bidder shall be permitted to correct a bid error after the bid opening that would cause such bidder to have the low bid, except that any bidder may correct~~

errors in extension of unit prices stated in the bids, or in multiplication, division, addition, or subtraction. In such cases, unit prices bid shall not be changed, and such error must be readily apparent on the face of the bid form.

e. ~~Nothing herein is intended to prohibit the acceptance of a voluntary reduction in price from a low bidder after bid opening, and prior to commencement of work, provided such reduction is not conditioned on, or does not result in, the modification or deletion of any specifications or conditions contained in the invitation to bid.~~

~~(2) A bidder who alleges a judgmental error of fact shall not be permitted to withdraw the bid after bid opening. If such bidder unilaterally withdraws the bid without permission after bid opening, the Town Manager director may suspend the vendor from receiving new orders from the town for up to two three years, dating from the date of unilateral withdrawal, and the Town shall retain any bid security submitted with the bid.~~

~~(3) A bidder who alleges a nonjudgmental error of fact may be permitted to withdraw the bid only when it is determined by the town manager or finance director that there is reasonable proof that such a mistake was made and, if the bid is the low bid, that the intended bid cannot be determined with reasonable certainty. If a bidder unilaterally withdraws the bid without permission after bid opening, the town manager or finance director may suspend the vendor from receiving new orders from the town for up to three two years, dating from the date of the unilateral withdrawal, and the town shall retain any bid security submitted with the bid.~~

~~(4) Information in a bid which concerns the responsibility of the bidder shall not necessarily be considered conclusive at the time of the bid opening, except when the invitation to bid unequivocally states that the bid shall not be considered responsive unless the particular information is provided in the bid. When such information has not been so declared as determinant of responsiveness of the bid:~~

~~a. The finance director may determine that the information submitted concerning the responsibility of the bidder is so administratively inadequate as to warrant a recommendation of rejection of the bid based on a lack of demonstrated responsibility.~~

~~b. The finance director may, after bid opening, request additional information from the bidder concerning the bidder's responsibility to perform; and the bidder may voluntarily, after bid opening, provide additional or corrective information concerning the bidder's responsibility as a bidder. The finance director shall consider this and all other information gained prior to the time of award or rejection in making a decision.~~

~~(5) A bid shall be considered responsive only if it conforms to the requirements of the invitation to bid concerning pricing, surety, insurance, specifications of the goods or services requested, and any other matter unequivocally stated in the invitation to bids as a determinant of responsiveness. A lack of conformity on these matters which is non-substantive in nature may be considered a technicality or irregularity which may be waived by the finance director.~~

(i) **Withdrawal of Bids:** A bidder can withdraw their bid up to the time listed for receipt of bids. If a bidder unilaterally withdraws their bid without permission after bid opening, the Finance Director may suspend the vendor from participating in future bids for up to three (3) years.

(j) **Corrections to bids:** The following shall govern the corrections of information submitted in a bid when the information is a material factor in determining the responsiveness of the bid.

(1) Errors in extension of unit prices or in multiplication, division, addition or subtraction in a bid may be corrected by the Finance Director or designee prior to award. In such cases, the unit prices bid shall not be changed. When bidders quote in words and in figures on items on the bid sheet and the words and figures do not agree, the words shall govern and the figures shall be disregarded.

(2) Nothing herein is intended to prohibit the acceptance of a voluntary reduction in price from the low bidder after recommendation to award bid to the low bidder, provided such reduction is not conditioned on, or does not result in, the modification or deletion of any specifications or conditions contained in the Invitation to Bid.

(k) **Responsible Bidder:** Factors to be considered in determining whether the standard of responsibility for bidders/proposers has been met include whether, in the Town's determination, a prospective vendor/contractor has:

(1) Appropriate financial, material, equipment, facility, and personnel resources, experience, knowledge and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements.

(2) A satisfactory record of performance on similar projects

(3) A satisfactory record of integrity

(4) Qualified legally to contract with the Town

(l) **RESPONSIVE BIDDER:** A bid shall be considered responsive only if it conforms to the requirements of the Invitation for Bids concerning pricing, surety, insurance, specifications of the commodities or services requested, inclusion of required documents and signed forms and any other matter unequivocally stated in the Invitation for Bids.

(m) **TIE BIDS.** If two (2) or more bidders are tied, the tie may be broken and the successful bidder selected by the following criteria presented in order of importance and consideration:

a. Quality of the items or services bid if such quality is ascertainable.

b. Delivery time if provided in the bid by the bidders.

c. Certification of a "Drug-Free Workplace Program" which meets criteria established in F.S. § 287.087.

d. Location of the vendor with the following award preferences:

i. A Town of Lake Park vendor.

ii. A Palm Beach County vendor.

iii. A Florida vendor.

iv. A minority business enterprise certified pursuant to the provisions of Section 288.703, Fla. Stat., as amended from time to time.

- e. If the above criteria are impossible to determine with any reasonableness or do not resolve the issue, the award will be given to that bidder whose bid was received earliest in time by the Town as indicated by the time clock stamp impressed upon the bid envelope of each bidder.

(n) **BID AWARD:** Award will ordinarily be made to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids, and shall be effective upon issuance of a purchase order, execution of a contract, or written notice of award by the Finance Director. The town may reject any bid prior to such issuance. In the event only one bid is received, the Town may award to the sole bidder if the bid is deemed to be reasonable and in the best interests of the Town or to request new bids. In the event all bids exceed budgeted funds, the Finance Director, with direction of the Town Manager, in cooperation with affected Department Director, is authorized, when time or economic considerations preclude re-solicitation to negotiate an adjustment of the bid price and/or bid specifications with the low responsive and responsible bidder in order to bring the bid within the amount of budgeted funds.

~~(o) **RESERVED RIGHTS:** The Town reserves the right to accept or reject any and all bids and/or to make award to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids and whose award will, in the opinion of the Town, be in the best interest of the Town.~~

(o) **REJECTION OR AWARD OF BIDS.**

(1) The Town reserves the right to accept or reject any and all bids and/or to make award to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation to bid and whose award will, in the opinion of the Town, be in the best interest of and most advantageous to the Town.

(2) Factors to be considered in determining whether the standard of responsibility has been met include whether, in the Town's determination, a prospective vendor/contractor has:

- a. Appropriate financial, material, equipment, facility, and personnel resources, experience, knowledge, and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- b. A satisfactory record of performance on similar projects;
- c. A satisfactory record of integrity;
- d. Qualified legally to contract with the Town; and
- e. Supplied all necessary information in connection with the inquiry concerning responsibility including but not limited to any licenses, permits, insurance, or organization papers required.

The prospective vendor/contractor shall supply information requested by the Town concerning the responsibility of such vendor/contractor. If such

vendor/contractor fails to supply the requested information, the Town shall base the determination of responsibility upon any available information or may find the prospective vendor/contractor nonresponsive if such information is not submitted within the time specified by the Finance Director.

(3) The Town may conduct a prequalification process in which the responsibility of potential vendors/contractors is evaluated and may then limit acceptance of bids or proposals to those vendors/contractors deemed qualified in such process.

~~(i) *When award effective.* Award shall be made to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation to bid, and shall be effective upon issuance of a purchase order, contract, or written notice of award by the finance director. The town may reject any bid prior to such issuance. In the event only one bid is received, the town may award to the sole bidder, negotiate with the sole bidder, or rebid. All bid awards must be approved by the town commission.~~

(p) *Changes and amendments.* The Finance Director may authorize changes/amendments for construction, and goods and/or services within the overall scope of the project or procurement of up to a cumulative amount of 20 percent or \$5,000.00, whichever is lower. If the amendment/change order exceeds the maximum amounts herein, the amount of the amendment/change order must be approved by the Town Commission. If the change is outside the scope of the original project or procurement as determined by the Finance Director, a new invitation to bid must be issued, unless an emergency or sole source situation exists. Should an emergency or sole source situation exist, a new contract with the existing contractor may be negotiated and presented to the town commission for approval, provided such contractor is qualified and available to perform on the new project, or is capable of securing the services of a qualified subcontractor. Extensions of time frames for completion of contracts may be authorized by the Finance Director.

(Ord. No. 9-1996, § II, 9-18-1996; Code 1978, § 2-103)

Sec. 2-249. Competitive sealed proposal process.

~~When it is determined and documented in writing by the using department and the finance director that the use of a competitive sealed bidding is either not practical or not advantageous to the town, due to the technical or specialized nature of the goods and/or services sought, the town may utilize the following competitive proposal processes as an alternative to the competitive bid process:~~

~~(1) *Requests for proposal (RFP) or requests for information (RFI).* Setting forth the terms and conditions of the goods and/or services sought including evaluation factors shall be issued.~~

~~a. *Notice.* Adequate notice shall be published in a newspaper of general circulation in the county for a reasonable time prior to the time set for the submission of responses and shall be mailed to all parties on the applicable vendor list.~~

~~b. *Submission.* Proposals must be received no later than the specified time, date and at the location specified for submission in the request for proposal or request~~

~~for information. No proposal shall be accepted after such time or at any other location than specified; any proposal received later or at any other location than specified shall be returned unopened.~~

~~e. *Proposal cancellation or postponement.* The Finance director may, prior to a request for proposal or request for information submission, elect to cancel or postpone the date and/or time for submission.~~

When it is determined by the Town Manager that the use of competitive sealed bidding is either not practical or not advantageous to the Town, the competitive proposal process may be used as an alternative to the competitive bid process.

- (a) **Public Notice:** Public notice of the Request for Proposal or Request for Statement of Qualification shall be given in the same manner as provided for competitive sealed bidding except all RFP or RFQ require a minimum of thirty (30) days for submission of proposals unless determined by the Finance Director to be not in the best interest of the Town.
- (b) **Evaluation Factors:** The Request for Proposals shall state the relative importance of price and other evaluation factors as listed in the Request for Proposal.
- (c) **Submission:** Proposals must be received no later than the specified time and date and at the location specified for submission in the Request for Proposal (RFP) or Request for Statement of Qualifications (RFQ). No proposal shall be accepted after such time or at any other location than specified; any proposal received later or at any other location than specified shall be returned unopened.
- (d) **Proposal Cancellation or Postponement:** The Town Manager, Finance Director or designee may, prior to the RFP or RFQ due date, elect to cancel or postpone the date and/or time for submission or opening. In such situations an addendum will be issued.
- (e) **Discussion with Responsible Proposer and Revisions to Proposals:** As provided in the Request for Proposals, discussions may be conducted with any responsible proposer who submits a proposal determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Proposer shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no exchange of information regarding the content or feasibility of the proposals by competing vendors.

~~(2) **PROPOSAL EVALUATION.**~~

~~a. Award shall be made to the most responsive, responsible offeror whose proposal is determined to be the most advantageous to the town in accordance with the evaluation criteria contained in the request for proposal or to the most qualified firm in the case of a request for information. Evaluation of offerors and/or proposals may be made in a multistep selection or bidding process as set forth in the request for proposal or request for information and shall be based upon factors of responsibility set forth in section 2-248(h)(2) and upon factors of responsiveness and quality based upon criteria set forth in~~

~~the request for proposal or request for information. The request for proposal or request for information shall state the relative importance of price and other criteria.~~

~~b. As provided in the request for proposal, discussions may be conducted with responsible offerors who submit proposals for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers in conducting discussions, there shall be no exchange of information regarding the content or feasibility of the proposals by competing offerors.~~

(f) **Proposal Evaluation:** Award shall be made to the most responsive, responsible proposer whose proposal is determined to be the most advantageous to the Town in accordance with the evaluation criteria contained in the RFP/RFQ. Evaluation of proposals may be made in a multi-step selection process as set forth in the RFP or RFQ.

~~(3) *Award.* Notice of the intent to award shall be posted at the location set for proposal submission. The award shall be made in accordance with the provisions of section 2-248(i). The contract file shall contain the basis on which the award is made.~~

(g) **Award:** Notice of the intent to award shall be posted at the location set for proposal submission.

(1) The Town reserves the right to conduct negotiations with two (2) or more proposers who respond to an RFP.

(2) Negotiations involving the Consultants Competitive Negotiation Act (CCNA) will be conducted by a team selected by the Purchasing Agent.

(h) **Proposal vs. Bid:** All of the guidelines specified for Invitation to Bid will apply to Request for Proposals unless otherwise stated in the guidelines for Request for Proposals.

(i) **Consultant Services:** Consultant Services for services other than for architecture, engineering, landscape architectural or surveying and mapping services are acquired in compliance with policies outlined in Invitation to Bid and/or Request for Proposal.

(1) Architectural, engineering, landscape architectural or surveying and mapping services are acquired using Florida Statute, Section 287.55, known as the Consultants Competitive Negotiation Act (CCNA).

(2) Design build contracts shall be established in compliance with Florida Statute, Section 287.055, known as the Consultants Competitive Negotiation Act (CCNA).

(j) **Continuing Consultant Services:** The Consultant's Competitive Negotiation Act (CCNA) does not provide criteria for negotiating a contract for Continuing Consultant Services. The Town has established selection criteria among consultants under Continuing Consultant Services Contracts. Consultant Services required for any project, which is within the scope of a

Continuing Service Contract with the Town, which services are within the scope of the Consultant Competitive Negotiations Act, shall be awarded as follows:

- (1) The Town Manager and Department Head in charge of the project for which such services are required shall determine which of the service providers then under continuing contract with the Town are potentially capable of providing the required services.
- (2) The Town Manager or Finance Director shall then request each such provider submit a proposed Scope of Services and a fee quotation. The Department Head shall review the proposals received. In the event he/she determines it to be in the best interest of the Town, prior to completing his/her review, to enter into negotiations with any service provider which has submitted a proposal with respect to the proposed scope of services, the proposed fee, or both, in order to have the project completed in the most efficient and economical manner possible; upon the conclusion of any such negotiations, the department head shall complete review of the proposals.
- (3) Upon completion of the proposals review, the Department Head shall prepare and submit to the Finance Director and Town Manager his/her recommendation as to which service provider should, in his/her professional judgment, receive authorization to perform the work. In making such determination he/she shall take into account factors set forth in Florida Statute, Section 287.055 (4)(b), with respect to service providers then under continuing contracts with the Town and the price for which the services are to be rendered.
- (4) The Town Manager will be the approving authority for all price proposals under ten thousand dollars (\$10,000.00); for all price proposals over ten thousand dollars (\$10,000.00) the Town Manager will review and make his/her recommendation to the Town Commission for approval.

(Ord. No. 9-1996, § II, 9-18-1996; Code 1978, § 2-104)

Sec. 2-250. Alternative source selection.

(a) *Small purchases.* Any purchase for an amount less than the mandatory bid amount may be made in accordance with those procedures promulgated in the Code; provided, however, no purchase shall be artificially divided so as to constitute a purchase for an amount less than the mandatory bid amount.

(b) *Sole source purchases.* The Town Manager ~~finance director~~ may make or authorize a purchase without competitive bid when the appropriate department head has documented in writing that such good and/or service is the only item that meets the need and is available through only one source of supply. Sole source purchases greater than ~~\$3,999.99~~ \$5,000.00 must be approved by the Town Manager. In addition, all sole source purchases exceeding the mandatory bid amount shall be approved by the Town Commission. Written determinations documenting sole source purchases shall be retained for a period of at least three years.

(c) *Emergency purchases.* The Town Manager or the Finance Director may make or authorize emergency purchases as defined herein. The appropriate Department Head shall document in writing that such good and/or service needs to be purchased on and shall be approved by the Town Commission. Written determinations documenting emergency purchases shall be retained for a period of at least three years.

(d) *Cooperative purchases.* Notwithstanding any requirements of this division, the Town Manager or the Finance Director may purchase goods and/or services under contract with the federal, state, or municipal governments or any other governmental agency or political subdivision providing the vendor extends the same terms and conditions of the contract to the town. Such purchases shall be subject to the approval levels specified in section 2-247.

(e) *Field purchase orders.* Field purchase orders may be utilized for purchases up to \$500.00. Field purchase orders do not require the preparation of a purchase requisition by the procuring department nor the approval of the Finance Director prior to the procurement of a commodity and/or service. The procuring department is responsible for ensuring that a competitive price is received for the commodity and/or service ordered, and that the budgetary appropriation for the commodity and/or service purchased is not over expanded. The Town Manager or the Finance Department shall determine the integrity of such purchases.

(f) ~~*Consultant services.—*~~

~~(1) *Estimated value equal to or in excess of mandatory bid amount.* Consultant services as defined herein when the estimated fee is equal to or in excess of the mandatory bid amount may be acquired through an invitation to bid or through the competitive sealed proposal process, provided the basis for this method of source selection is documented.~~

~~(2) *Estimated value less than the mandatory bid amount.* The procurement of consultant services as defined herein when the estimated fee is less than the mandatory bid amount shall be awarded in accordance with procedures promulgated in section 2-247.~~

~~(g) *Professional architectural, engineering, landscape architectural, design build and surveying and mapping services.* The procurement of professional services as listed in the above title shall be made in accordance with F.S. § 287.055.~~

(f) *Construction services.* The procurement of construction services by the Town and the Community Redevelopment Agency shall be acquired in accordance with the competitive sealed bid process outlined in section 2-248.

(1) Bid security shall be required for all competitive sealed bidding for construction contracts when the total cost of construction is estimated by the Town Manager or the Finance Director to exceed \$100,000.00. Bid security shall be an original bid bond executed by a surety company admitted and authorized to do business in the State of Florida. Cash, a certificate of deposit, treasurer's check, or a certified cashier's check satisfactory to the Town may be tendered in lieu of the bid bond. Nothing contained herein shall prevent the Town from requiring bid security on construction contracts under \$200,000.00 as determined in the discretion of the Town Manager to be in the best interest of the Town. Bid security shall be in an amount deemed sufficient by the Town Manager to insure bid compliance but in no event shall the bid security be less than five percent of the bid amount.

(2) Bids or proposals which are submitted without the required bid security shall be rejected.

(3) Any person, firm or entity who enters into a written construction contract with the Town which is for \$200,000.00 or more, shall before commencing the work, execute and deliver to the Town within the time specified by the contract or procurement documents, a payment and performance bond, each in the amount equal to or greater than 100 percent of the total contract price, unless the amount of the bonds is reduced to a lesser amount as determined by the Town Commission, but in no event shall the amount of each bond be less than 100 percent of the total contract price. The bonds shall be issued by a surety insurer authorized to do business in the State of Florida as a surety. The required bonds shall also be recorded in the public records of Palm Beach County. At the discretion of the Town Commission, any person or entity entering into a construction contract which is for \$200,000.00 or less may be exempted from executing the payment and performance bond.

(4) In lieu of the bond required by this section, a contractor may file with the Town an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or a security of a type listed in F.S. Ch. 625, pt. II. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond required by this section. The determination of the value of an alternative form of security shall be made by the Town Manager.

(5) The bond must state on its front page: the name, principal business address, and phone number of the contractor, the surety, the owner of the property being improved, and, if different from the owner, the contracting public entity; the contract number assigned by the contracting public entity; and a description of the project sufficient to identify it, such as a legal description or the street address of the property being improved, and a general description of the improvement. Such bond shall be conditioned upon the contractor's performance of the construction work in the time and manner prescribed in the contract and promptly making payments to all persons defined in F.S. § 713.01, as amended, who furnish labor, services, or materials for the prosecution of the work provided for in the contract.

(6) If at any time after the execution of the contract and the surety bonds, the Town deems the surety or sureties upon such bonds to be unsatisfactory or, if for any reason such bonds cease to be adequate to cover the requirements of the contract, the Town may require the contractor, at its sole expense and within five days after the receipt of notice from the Town, to furnish an additional bond in such form and amount and with such surety as shall be satisfactory to the Town. In such event, no further payment to the contractor shall be deemed to be due under the contract until such new or additional security shall be furnished in manner and form satisfactory to the Town as to protect the interests of the Town and ensure the payment of persons supplying labor and materials under the contract. Final payment of all construction projects shall be approved by the Town Manager ~~finance director~~ after certification of completion from the Community Development Director.

(7) Nothing herein shall prohibit the Town from deleting line items within the invitation to bid and purchasing said items directly from a supplier in an amount not exceeding the bid amount per line item of the successful bidder, without further bidding, in an effort to benefit from the Town's tax exempt status.

(Ord. No. 9-1996, § II, 9-18-1996; Ord. No. 1-2000, § I, 2-2-2000; Code 1978, § 2-105; Ord. No. 01-2007, § 2, 3-7-2007)

Sec. 2-251. Contract document.

(a) *General provisions.* Every procurement of contractual services shall be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services, which provisions and conditions shall not be limited to:

- (1) A provision that bills for fees or other compensations for services or expenses be submitted in detail sufficient for a proper pre-audit and post-audit thereof.
- (2) A provision allowing unilateral cancellation by the agency for the refusal by the contractor to allow public access to all documents, papers, letters, or other material subject to the provisions of F.S. ch. 119 and made or received by the contractor in conjunction with the contract.
- (3) Where feasible, a provision dividing the contract into units of deliverables, which shall include, but not be limited to, reports, findings, and drafts, that must be received and accepted in writing by the contract manager prior to payment.
- (4) A provision specifying the criteria and the final date by which such criteria must be met for completion of the contract.
- (5) Where applicable, a provision specifying that the contract may be renewed on a yearly basis for a maximum of two years after the initial contract, the terms under which the cost may change as determined in the invitation to bid or request for proposal; and that renewals shall be contingent upon satisfactory performance evaluations by the agency and subject to the availability of appropriate funds.

(b) **SIGNING OF WRITTEN AGREEMENT.** The written agreement shall be signed by the Town Manager and/or the Mayor and the contractor prior to the rendering of any contractual service, except in the case of a valid emergency as certified by the Town Manager.

(Ord. No. 9-1996, § II, 9-18-1996; Code 1978, § 2-106)

Sec. 2-252. Protested solicitations and awards.

(a) **RIGHT TO PROTEST.** Any actual, or prospective bidder or proposer who is allegedly aggrieved in connection with the solicitation or pending award of a contract may protest to the Finance Director.

(b) **NOTICE.**

(1) A notice of bid protest must be submitted no later than 5:00 p.m., local time, three business days after the bid award. The protest must be in writing, and must identify the protestant and the solicitation involved, and shall include a factual summary of the basis of the protest.

~~(2) A formal written protest must be filed no later than 5:00 p.m., local time, five business days after the date of filing the notice of protest. The formal written protest shall:~~

- ~~a. Identify the protestant and the solicitation involved;~~
- ~~b. Include a clear statement of the grounds on which the protest is based;~~
- ~~c. Defer to the statutes, laws, ordinances, or other legal authorities which the protestant deems applicable to such grounds; and~~
- ~~d. Specifically request the relief to which the protestant deems itself entitled by application of such authorities to such grounds.~~

~~The protestant shall mail a copy of the notice of protest and the formal written protest to any person with whom protestant is in dispute and shall provide the finance director with evidence of such mailing.~~

(2) Formal bid protest submission. A formal written protest must be filed at the office of the Finance Director no later than 5:00 p.m., local time, within five business days after the date of filing the notice of bid protest. The formal written bid protest shall contain at a minimum the following information:

- a. Identification of ~~Identify~~ the name, address and contact information of the and protestor protestant and the solicitation involved;
- b. ~~Include a~~ A clear, brief, statement of the facts, legal arguments, and other grounds on which the protest is based;
- c. Identification of any applicable ~~Defer to the statutes, laws, or ordinances, or other legal authorities which the protestor protestant deems applicable to the protest such grounds; and~~
- d. ~~Specifically request the~~ Clearly state, in writing, the specific nature of the relief requested by to which the protestor, protestant, deems itself entitled by application of such authorities to such grounds.
- e. Any additional written or physical materials, objects, statements, and arguments, which the protestor deems relevant to the issues raised in the request for review.

The protestant shall mail a copy of the notice of protest and the formal written protest to any person with whom the protestant is in dispute, and shall provide the Town Manager with evidence of such mailing.

(3) A formal written protest is considered filed with the Town when it is received by the Finance Director. Accordingly, a protest is not timely filed unless it is received by the Finance Department within the times specified above. Failure to file a written notice of protest and subsequent formal written protest within the time period specified shall result in relinquishment of all rights of protest by the vendor and abrogation of any further bid protest proceedings.

(4) These protest procedures shall be the sole remedy for challenging an award of bid or proposal. Bidders and proposers are prohibited from attempts to influence, persuade or promote through any other channels or means. Such attempts shall be cause for suspension in accordance with section 2-253(a).

(c) *Authority to resolve.* The Finance Director shall attempt to resolve the protest in a fair and equitable manner, and shall render a written decision within 10 business days to the protestant. The protestant may appeal such decision, in writing to the Finance Director within five business days of the date of the written decision, whereby a protest committee, comprised of the Finance Director, Town Manager, Town Attorney, and the Department Head of the using department, shall have the authority to settle and resolve the protest.

(d) *Proceedings.* The Finance Director shall serve as the presiding officer of the protest committee in a nonvoting capacity. The Town Clerk shall give reasonable notice to all substantially affected persons or businesses prior to the date scheduled to consider the appeal of the protest.

(1) At or prior to the protest proceeding, the protestant may submit any written or physical materials, objects, statements, affidavits, and arguments which the protestant deems relevant to the issues raised.

(2) In the proceeding, the protestant, or its representative or counsel, may also make an oral presentation of the evidence and arguments. However, neither direct nor cross examination of witnesses will be permitted, although the presiding officer and other committee members may make whatever inquiries deemed pertinent to a determination of the protest.

(3) The judicial rules of evidence shall not apply and the committee shall base its decision on such information adduced in the course of the proceeding upon which reasonable prudent persons rely in the conduct of their affairs.

(4) A quorum of the committee consists of a majority of committee members. A decision shall be rendered by a majority vote of the committee members in attendance.

(5) If it is deemed that the solicitation or award is in violation of law or the procedures outlined in this resolution, the solicitation or award shall be cancelled or revised.

(6) If it is determined that the solicitation or award should be upheld, the Finance Director shall promptly issue a decision on behalf of the committee in writing stating the reason for the action with a copy furnished to the protestant and all substantially affected persons or businesses. The decision shall be final and conclusive as to the Town. Any

party may arrange for the proceedings to be stenographically recorded, and shall bear the expense of such recording. The proceedings shall be open to the general public.

(e) *Stay of procurement during protests.* In the event of a timely protest, the Finance Director shall not proceed further with the solicitation or with the pending award of the contract until the Finance Director, with the advice of the Town Attorney and after consultation with the using department makes a determination that the award of the contract without delay is necessary to protect substantial interests of the Town.

(f) *Reservation of powers to settle actions pending before the courts.* Nothing in this section is intended to affect the existing powers of the Town Commission to settle actions pending before the courts.

(g) *Damages.* In the event of the court upholding the protestant's claim, the court awarded damages on behalf of the protestant shall be solely limited to bid/proposal preparation costs.

(Ord. No. 9-1996, § II, 9-18-1996; Code 1978, § 2-107)

Sec. 2-253. Suspension and debarment.

(a) *Authority.* The Finance Director may suspend or debar for cause the right of a vendor to be included on a vendor list and any bid or response from that vendor rejected; provided, however, the Commission shall have the power to waive or lift such suspension or debarment.

(b) *Suspension.* A vendor may be suspended for a period not to exceed two years as determined by the Finance Director based upon the following:

(1) Vendor defaults or fails to fully comply with the conditions, specifications, or terms of a bid, quotation, proposal or contract with the Town;

(2) Vendor commits any fraud or misrepresentation in connection with a bid, quotation proposal or contract with the Town;

(3) Vendor is charged by a court of competent jurisdiction with the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(4) Vendor is charged by a court of competent jurisdiction with the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a town government contractor. If charges are dismissed or the vendor found not guilty, the suspension shall be lifted automatically upon written notification and proof of final court disposition provided by the vendor to Town;

(5) Vendor becomes insolvent, has proceedings in bankruptcy instituted against it, or compounds its debts or assigns over its estate or effects for payment thereof, or has a receiver or trustee appointed over its property;

(6) Vendor commission or any act or omission to perform any act which is grounds for debarment;

- (7) Vendor violates the ethical standards set forth in local, state, or federal law;
- (8) Vendor fails to comply with the minority business enterprise participation or minority business enterprise requirements of an awarded contract; or
- (9) Any other cause the Finance Director determines to be so serious and compelling as to materially and adversely affect responsibility of a business as a town government contractor, including but not limited to suspension by another governmental entity for substantial cause.

(c) *Debarment.* A vendor may be permanently debarred for the following:

- (1) Default or failure to fully comply with the conditions, specifications, drawings, or terms of a bid, proposal or contract with the Town twice in any three-year period.
- (2) Conviction by or judgment obtained in a court of competent jurisdiction for commission of those offenses in connection with the vendor's commercial enterprise stated in subsections (b)(3) and (b)(4) of this section. If the conviction or judgment is reversed through the appellate process, the debarment shall be removed immediately upon written notification and proof of final court disposition from the vendor to the Town.

(d) *Decision.* After the Finance Director has determined there is cause to suspend or debar a vendor, the Finance Director shall notify the vendor in writing of the debarment or the period of suspension and the reasons for the action taken.

(e) *Public entity crime.* Any vendor who has been convicted of a public entity crime, as defined by F.S. § 287.133, shall not be able to transact business with the Town to the extent as specified in F.S. § 287.133(3)(a).

(f) *Finality of decision.* The suspension or debarment shall be final and conclusive unless the suspended or debarred vendor initiates protest proceedings pursuant to section 2-252 within 21 days after the date of notification.

(Ord. No. 9-1996, § II, 9-18-1996; Code 1978, § 2-108)

Sec. 2-254. Inspections and tests.

(a) The Finance Director or appropriate Department Head may inspect, or arrange for the inspection of, all deliveries of supplies, materials, equipment or contractual services to determine conformance with specifications set forth in the order of contract.

(b) Any using department which has the staff and facilities for adequate inspection may be authorized by the Finance Director to inspect deliveries made to it.

(c) The Finance Director shall have the authority to require chemical and/or physical tests or samples submitted with bids and, samples of deliveries which are necessary to determine their quality and conformance with the specifications. For such tests, the Finance Director shall have the authority to make use of any facilities of the Town where such tests may be competently performed or an outside laboratory may be utilized. Should the product fail such testing, the Town may require the vendor to pay the town for any expense incurred in testing.

(Ord. No. 9-1996, § II, 9-18-1996; Code 1978, § 2-109)

Sec. 2-255. Equal opportunity/minority and women business enterprises.

(a) The Town shall use its best efforts to ensure that minority and women businesses shall have an equitable opportunity to participate in the Town's procurement process and that no business shall be excluded from participation in, denied benefits of, or otherwise discriminated against in connection with the award and performance of any contracts with the Town because of race, color, religion, natural origin, age, sexual orientation, gender, marital status, handicap or physical impairment.

(b) This division shall be read consistently with the Florida Civil Rights Act, F.S. ch. 760, and shall not repeal existing or subsequently enacted town minority/women business enterprise ordinances.

(Ord. No. 9-1996, § II, 9-18-1996; Code 1978, § 2-110)

Sec. 2-256. Conflict of interest.

(a) The standards of conflict for public offices, employees, government and attorneys as set forth in F.S. § 112.313 are hereby adopted and incorporated herein by reference as if fully set forth herein.

(b) The Finance Director, every member of the Finance Director's staff, and any employee of the Town engaged in the procurement of goods and/or services are prohibited from accepting or receiving any money, rebate, gift or anything of value or any promise of future reward or compensation, from any person, firm or corporation to which any purchase or contract may be awarded. This prohibition shall not apply to holiday gifts with a value of \$25.00 or less.

(Ord. No. 9-1996, § II, 9-18-1996; Code 1978, § 2-110.1)

Secs. 2-257--2-280. Reserved.

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

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

Section 5. Codification. The Sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "Ordinance" may be changed to "section", "article", or any other appropriate word.

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