



# AGENDA

Lake Park Town Commission  
Town of Lake Park, Florida  
Regular Commission Meeting  
Wednesday, December 16, 2009, Immediately  
following the CRA Meeting  
Lake Park Town Hall  
535 Park Avenue

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

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. **PROCLAMATION:**
  - **Eddie L. Cowart, Public Works Employee in Recognition of 36 ½ Years of Service**
  - **Carl Pierre, Library Employee**
  - **Florida League of Cities Statement of Support for National Guard and Reserve**

**G. 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.

**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. Regular Commission Meeting Minutes of November 4, 2009  | Tab 1 |
| 2. Regular Commission Meeting Minutes of November 18, 2009   | Tab 2 |
| 3. Settlement of Vehicular Accident Which Occurred on April 14, 2009   | Tab 3 |
| 4. Resolution No. 60-12-09 Community Development Block Grant (CDBG) 2010 Grant Application                                     | Tab 4 |
| 5. Recommendation of Award to Arch Enterprises, Inc. to Replace Interim Paver Cover at the Marina in the Amount of \$78,005.14 | Tab 5 |
| 6. Resolution No. 61-12-09 Add a Job Description for Position of Library Technical Assistant I                                 | Tab 6 |
| 7. Resolution No. 62-12-09 Amending the Job Description for Library Assistant I  | Tab 7 |

**I. PUBLIC HEARING(S)**

**ORDINANCE ON SECOND READING:**

8. ORDINANCE NO. 17-2009 - Changing the Time of the Regular Commission Meeting Tab 8  
AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 2, DIVISION 2, SECTION 2-51, OF THE TOWN CODE ENTITLED "MEETINGS" TO CHANGE THE TIME REGULAR MEETINGS OF THE TOWN COMMISSION BEGIN; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

**J. ORDINANCES ON FIRST READING:**

9. ORDINANCE NO. 18-2009 - Text change to District C-4 Tab 9  
AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 78, ARTICLE III, SECTION 78-74 OF THE TOWN'S CODE OF ORDINANCES, ENTITLED "C-4 BUSINESS DISTRICT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

**10. ORDINANCE NO. 19-2009– PADD Signage** **Tab 10**  
**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING THE LAKE PARK MUNICIPAL CODE AT CHAPTER 78 ENTITLED “ZONING,” ARTICLE III, SECTION 78-70, ENTITLED “PARK AVENUE DOWNTOWN DISTRICT”; AMENDING SECTION 78-70(I) ENTITLED “WAIVERS”; AMENDING SECTION 78-70(n) ENTITLED “SUPPLEMENTAL DISTRICT REGULATIONS” TO PROVIDE ADDITIONAL PROVISIONS PERTAINING TO OBSCURING GROUND FLOOR WINDOWS; AMENDING SECTION 78-70(p) ENTITLED “SIGNS” AT SUBSECTIONS (1), (2), (5), (6), (7) AND (8), TO CHANGE CERTAIN EXISTING SIGN REGULATIONS AND ADD PROVISIONS TO THE AFORESAID SUBSECTIONS REGULATING PROHIBITED SIGNS, PERMITTED SIGNS, CONSTRUCTION SIGNS, SIGN DESIGN REQUIREMENTS, SIGN ILLUMINATION REQUIREMENTS, AND NON-CONFORMING SIGNS; CREATING NEW SUBSECTION 78-70(p)(10) TO BE ENTITLED “ADMINISTRATIVE SIGN WAIVER PROCEDURE” WHICH DELEGATES CERTAIN POWERS AND DUTIES TO THE COMMUNITY DEVELOPMENT DIRECTOR TO GRANT SIGN WAIVERS UNDER LIMITED CIRCUMSTANCES; AMENDING TABLE 78-70-7 ENTITLED “PERMITTED SIGNS” TO CLARIFY RESTRICTIONS ON THE SIZE, NUMBER, AND COPY FOR SIGNS AND OTHER SIGNAGE RESTRICTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**K. DISCUSSION AND GENERAL APPROVAL OF ITEM:**

**11. Development of the Adopt a Soldier Program**

**Tab 11**

**12. Declaration of Zoning in Progress Pertaining to Pain Management Clinics** **Tab 12**

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

**M. ADJOURNMENT:**

# Proclamation

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

**Meeting Date:** December 16, 2009

Agenda Item No. *Proclamation*

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

**SUBJECT:** Proclamation in Honor of Eddie L. Cowart

**RECOMMENDED MOTION/ACTION:** Approval of Proclamation

Approved by Town Manager *W.P. Lewis* Date: *12/2/09*

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Date of Actual Submittal

|   |  |   |
|---|--|---|
| <b>Originating Department:</b><br>Town Manager  | Costs: \$ -0-<br><br>Funding Source:<br><br>Acct. #  | <b>Attachments:</b><br>Copy of Proclamation   |
| <b>Department Review:</b><br><input type="checkbox"/> Community Affairs _____<br><input type="checkbox"/> Community Development _____<br><input type="checkbox"/> Finance _____ | <input type="checkbox"/> Fire Dept _____<br><input type="checkbox"/> Human Resources _____<br><input type="checkbox"/> Library _____<br><input type="checkbox"/> Marina _____<br><input type="checkbox"/> PBSO _____ | <input type="checkbox"/> Public Works _____<br><input type="checkbox"/> Town Attorney _____<br><input type="checkbox"/> Town Clerk _____<br><input type="checkbox"/> Town Manager _____ |
| <b>Advertised:</b><br>Date: _____<br>Paper: _____<br><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_BMT _____<br>OR<br>Not applicable in this case <u>Yes</u> _____:<br><br>Please initial one.  |

**Summary Explanation/Background:**

**PROCLAMATION  
IN HONOR OF EDDIE L. COWART**

**WHEREAS;** for 36 and a half years. Eddie L. Cowart has served as an employee of the Town of Lake Park; and

**WHEREAS;** throughout his employment. Eddie L. Cowart has diligently and with distinction served the citizens of the Town of Lake Park as a Sanitation Worker, Public Works Employee I, Public Works Employee II, and Equipment Operator II within the Public Works Department; and

**WHEREAS;** in recognition of his years of experience and positive work record with the Town, on October 1, 1996, Eddie L. Cowart was promoted to the position of Foreman in the Residential Sanitation Division of the Public Works Department; and

**WHEREAS;** Eddie L. Cowart has distinguished himself by constantly demonstrating the importance of strong and effective leadership, and has by his example inspired his division to provide a high degree of customer service to the residents of the Town of Lake Park; and

**WHEREAS;** as an example of the innovative approach and dedication to duty that he has exemplified throughout his employment with the Town, in response to Hurricanes Frances and Jeanne in 2004 and Hurricane Wilma in 2005, Eddie L. Cowart developed an expedited method for the removal of hurricane debris; and

**WHEREAS;** because of his professionalism, natural ability to lead, and knowledge of all areas of the Public Works Department, Eddie L. Cowart is highly respected not only by his peers and by management, but by all who have had the privilege to consider him a colleague; and

**WHEREAS;** the Town of Lake Park wishes to publicly recognize Eddie L. Cowart for his accomplishments and as an esteemed member of the Public Works Department.

**NOW, THEREFORE,** on behalf of the Commission of the Town of Lake Park, I, Desca DuBois, Mayor of the Town of Lake Park, do hereby publicly recognize and commend Eddie L. Cowart for his dedication and the service which he has rendered to this community.

**IN WITNESS WHEREOF,** I have hereto set my hand and caused the official Seal of the Town of Lake Park, Florida to be affixed this 16<sup>th</sup> day of December, 2009.

By: \_\_\_\_\_  
Mayor Desca DuBois

ATTEST:

\_\_\_\_\_  
Vivian Mendez Lemley,  
Town Clerk

# Proclamation

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

**Meeting Date:** December 16, 2009

**Agenda Item No.** *Proclamation*

- |   |   |
|---|---|
| <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 type="checkbox"/> GENERAL APPROVAL OF ITEM |
| <input type="checkbox"/> GENERAL APPROVAL OF ITEM       | <input type="checkbox"/> CONSENT AGENDA           |
| <input checked="" type="checkbox"/> Other: Proclamation |   |

**SUBJECT:** Proclamation in Honor of Carl Pierre, Library Employee

**RECOMMENDED MOTION/ACTION:** Approval of Proclamation

**Approved by Town Manager** *[Signature]* **Date:** *12/9/09*

Name/Title \_\_\_\_\_ Date of Actual Submittal \_\_\_\_\_

|   |  |   |
|---|--|---|
| <b>Originating Department:</b><br>Town Manager  | Costs: \$ -0-<br>Funding Source:<br>Acct. #  | <b>Attachments:</b><br>Copy of Proclamation   |
| <b>Department Review:</b><br><input type="checkbox"/> Community Affairs _____<br><input type="checkbox"/> Community Development _____<br><input type="checkbox"/> Finance _____ | <input type="checkbox"/> Fire Dept _____<br><input type="checkbox"/> Human Resources _____<br><input type="checkbox"/> Library _____<br><input type="checkbox"/> Marina _____<br><input type="checkbox"/> PBSO _____ | <input type="checkbox"/> Public Works _____<br><input type="checkbox"/> Town Attorney _____<br><input type="checkbox"/> Town Clerk _____<br><input type="checkbox"/> Town Manager _____ |
| <b>Advertised:</b><br>Date: _____<br>Paper: _____<br><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_BMT _____<br>or<br>Not applicable in this case _____<br>Please initial one.  |

**Summary Explanation/Background:**

To honor and commend Carl Pierre, a long time Library employee for his excellent quality of work and to wish him well in his educational goals as he leaves Lake Park to complete his degree at Florida State University.

**PROCLAMATION  
IN HONOR OF CARL PIERRE**

**WHEREAS;** for more than five years, Carl Pierre has served as a Library Shelver in the Town of Lake Park Public Library; and

**WHEREAS;** prior to his employment, Carl Pierre served as volunteer for the Lake Park Public Library and he did so with distinction; and

**WHEREAS;** in the capacities in which he has served the Town of Lake Park, Carl Pierre has demonstrated his commitment to the Town and to its citizens by providing the utmost in customer service by always providing assistance with a friendly smile and a pleasant comment; and

**WHEREAS;** Carl Pierre has always gone beyond the call of duty by accepting and performing additional duties and has always placed the Town and its Library's patrons first in the performance of his responsibilities; and

**WHEREAS;** through his devotion and high caliber of customer service, sense of teamwork, and professionalism, Carl Pierre has proven himself to be a highly valued and knowledgeable employee and a great asset to the Town of Lake Park; and

**WHEREAS;** the Town of Lake Park wishes to publicly recognize Carl Pierre for his accomplishments and as an esteemed member of the Lake Park Public Library staff.

**NOW, THEREFORE,** on behalf of the Commission of the Town of Lake Park, I, Desca DuBois, Mayor of the Town of Lake Park, do hereby publicly recognize and commend Carl Pierre for his dedication and the service which he has rendered to this community, and extend to him best wishes and hopes for great success as he goes forth to pursue his educational goals.

**IN WITNESS WHEREOF,** I have hereto set my hand and caused the official Seal of the Town of Lake Park, Florida to be affixed this 16<sup>th</sup> day of December, 2009.

By: \_\_\_\_\_  
Mayor Desca DuBois

ATTEST:

\_\_\_\_\_  
Vivian Mendez Lemley, Town Clerk

# Proclamation

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

**Meeting Date: December 16, 2009**

Agenda Item No. *Proclamation*

- |   |   |
|---|---|
| <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 type="checkbox"/> CONSENT AGENDA |
| <input type="checkbox"/> GENERAL APPROVAL OF ITEM       |   |
| <input checked="" type="checkbox"/> Other: Proclamation |   |

**SUBJECT: Proclamation Endorsing the Statement of Support for the Guard and Reserve**

**RECOMMENDED MOTION/ACTION: Approval of Proclamation and Statement of Support for the Guard and Reserve**

Approved by Town Manager \_\_\_\_\_ Date: \_\_\_\_\_  
*Ronnie McLaughlin* *12/11/09*  
 Name/Title *HR Director* Date of Actual Submittal

|   |  |   |
|---|--|---|
| <b>Originating Department:</b><br>Human Resources   | Costs: \$ -0-<br>Funding Source:<br>Acct. #  | <b>Attachments:</b><br>Copy of Proclamation and Statement of Support  |
| <b>Department Review:</b><br><input type="checkbox"/> Community Affairs _____<br><input type="checkbox"/> Community Development _____<br><input type="checkbox"/> Finance _____ | <input type="checkbox"/> Fire Dept _____<br><input type="checkbox"/> Human Resources _____<br><input type="checkbox"/> Library _____<br><input type="checkbox"/> Marina _____<br><input type="checkbox"/> PBSO _____ | <input type="checkbox"/> Public Works _____<br><input type="checkbox"/> Town Attorney _____<br><input type="checkbox"/> Town Clerk _____<br><input type="checkbox"/> Town Manager _____ |
| <b>Advertised:</b><br>Date: _____<br>Paper: _____<br><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 <u>BMT</u><br>OR<br>Not applicable in this case _____:<br><br>Please initial one.  |

**Summary Explanation/Background:**

In September 2009, the Town of Lake Park was advised by the Florida League of Cities that it had unanimously passed a resolution in support of our American soldiers serving in the National Guard and Reserve, and that the Florida Employer Support of the Guard and Reserve was requesting that cities adopt similar statements of support. The purpose of this item is to endorse the Statement of Support for the National Guard and Reserve by the Town of Lake Park.



# STATEMENT OF SUPPORT FOR THE GUARD AND RESERVE



## TOWN of LAKE PARK

We recognize the National Guard and Reserve are essential to the strength of our nation and the well-being of our communities.

In the highest American tradition, the patriotic men and women of the Guard and Reserve serve voluntarily in an honorable and vital profession. They train to respond to their community and their country in time of need. They deserve the support of every segment of our society.

If these volunteer forces are to continue to serve our nation, increased public understanding is required of the essential role of the Guard and Reserve in preserving our national security.

Therefore, we join other employers in pledging that:

- We fully recognize, honor and enforce the Uniformed Services Employment and Reemployment Rights Act (USERRA).
- Our managers and supervisors will have the tools they need to effectively manage those employees who serve in the Guard and Reserve.
- We will continually recognize and support our country's service members and their families in peace, in crisis, and in war.

\_\_\_\_\_  
Employer

*James H. [Signature]*  
Chairman  
National Committee for Employer  
Support of the Guard and Reserve

*Robert [Signature]*  
Secretary of Defense

\_\_\_\_\_  
Date



# Consent Agenda

# TAB 1

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

Meeting Date: **December 16, 2009**

Agenda Item No. *Tab 1*

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

**SUBJECT:** Regular Commission Meeting Minutes of November 4, 2009.

**RECOMMENDED MOTION/ACTION:** Approve the Regular Commission Meeting Minutes of November 4, 2009.

Approved by Town Manager

*W. Davis*

Date:

*12/2/09*

Deputy Clerk

*Josiah Spahr*

Date of Actual Submittal

*11/23/09*

|   |   |  |
|---|---|--|
| <b>Originating Department:</b><br>Town Clerk  | Costs: \$ N/A<br><br>Funding Source:<br><br>Acct. #   | <b>Attachments:</b>  |
| <b>Department Review:</b><br><input type="checkbox"/> City Attorney<br><input type="checkbox"/> Community Affairs<br><input type="checkbox"/> Community Development | <input type="checkbox"/> Finance _____<br><input type="checkbox"/> Fire Dept _____<br><input type="checkbox"/> Library _____<br><input type="checkbox"/> PBSO _____ | <input type="checkbox"/> Personnel _____<br><input type="checkbox"/> Public Works _____<br><input checked="" type="checkbox"/> Town Clerk _____<br><input type="checkbox"/> Town Manager _____ |
| <b>Advertised:</b><br>Date: _____<br>Paper: _____<br><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 _____<br>or<br>Not applicable in this case <input checked="" type="checkbox"/> _____:<br><br>Please initial one.  |

**Summary Explanation/Background:**



**Minutes  
Town of Lake Park, Florida  
Regular Commission Meeting  
November 4, 2009 7:30 p.m.**

**Town Commission Chambers, 535 Park Avenue**

The Town Commission met for the purpose of a Regular Commission Meeting on Wednesday, November 4, 2009 at 7:30 p.m. Present were Mayor DuBois, Vice-Mayor Carey, Commissioners Daly, Rumsey, and Osterman, Attorney Thomas Baird, Town Manager Maria Davis and Town Clerk Vivian Lemley.

Mayor DuBois led the invocation and the Pledge of Allegiance.  
Town Clerk Vivian Lemley performed the Roll Call.

**ADDITIONS/DELETIONS/APPROVAL OF AGENDA**

Proclamation to Eddie Cowart was deferred to the next Commission Meeting.

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

Vote on Motion:

| Commission Member     | Aye | Nay | Other |
|-----------------------|-----|-----|-------|
| Commissioner Rumsey   | X   |     |       |
| Commissioner Daly     | X   |     |       |
| Commissioner Osterman | X   |     |       |
| Vice-Mayor Carey      | X   |     |       |
| Mayor DuBois          | X   |     |       |

Motion passed 5-0.

**PRESENTATION**

**Street Lighting Options by Techno Engineering, Inc.**

CRA Project Manager Richard Pittman gave a brief explanation of the purpose for the presentation and his affiliation with Techno Engineering, Inc. He introduced "Nazie" as the owner of Techno Engineering, Inc. and as the person who would be giving the presentation.

Town Manager Maria Davis stated that the purpose of the presentation was the Commission's desire to increase lighting in the Town and to explore all of the different options for lighting.

"Nazie" gave a brief history of her background and experience with street lighting. She began a Power Point presentation regarding street lighting and the option of LED lights (see Exhibit "A"). She explained the regular light poles with incandescent lights versus the LED lights (see page 3 of Exhibit "A"). She discussed why LED lights were better than the incandescent lights (see page 3 of Exhibit "A"). LED lights can last 12 to 15 years which outlasts all other types of light bulbs. She described the different types of light bulbs (see pages 5 through 10 of Exhibit "A"). She began to discuss the difference between LED lighting and other light options (see pages 14 through 16 of Exhibit "A"). She discussed how other states and cities switched to LED street lighting and how it benefited them (see pages 17 through 21 of Exhibit "A"). She discussed and explained the LED light's lifespan (see page 26 of Exhibit "A"). She discussed LED light loss factors, warranty, glare concerns, design and the recyclable value of LED lights (see pages 27 through 32 of Exhibit "A"). She continued to discuss the benefits of LED lights (see pages 33 through 46 of Exhibit "A"). She explained and discussed induction lighting and the "Icetron Quictronic System" (see pages 47 through 63 of Exhibit "A"). She discussed and explained "Comparison Tables" of LED and Induction lighting (see pages 64 through 66 of Exhibit "A"). She explained different financing options and cost estimates (see pages 67 through 74 of Exhibit "A").

Mayor DuBois asked if a Town owned lighting system would require training for employees.

Town Manager Maria Davis stated that eventually training would be needed. The fixtures are very low maintenance which would require minimal effort from employees to maintain.

Mayor DuBois asked if the Town would be responsible for getting the lighting repaired in the event of a storm or other event that would break the lighting pole.

Town Manager Maria Davis stated that the Town would be responsible for the repair and maintenance of the poles.

Commissioner Osterman asked if there were currently any companies that do maintenance on LED lighting.

"Nazie" explained that the City of West Palm Beach was using a company called C.R. Dun for the lighting maintenance.

Commissioner Osterman asked if there stimulus funds available for green conversion.

"Nazie" stated that she had not checked into it but the site to research would be EAAPak? and DOA.

Commissioner Rumsey asked if the Town owned its own system but receiving the feed from FPL he would want to make sure that FPL would not skip over repairing or restoring the feed to the Town in the event of a hurricane.

“Nazie” explained that she recommended underground lighting which would have less complications.

Commissioner Rumsey asked how far into the block would the LED lights project.

“Nazie” explained that there would be a staggered design throughout the street and would be approximately five poles per block.

Commissioner Rumsey asked how much the Town was presently spending on FPL lighting.

Finance Director Anne Costello stated that the Town’s current street lighting budget was \$70,000 per year.

Commissioner Rumsey asked if the cost would decrease if LED lighting was used.

Finance Director Anne Costello explained that the entire Town was not currently lit by lampposts but would be increasing the energy usage therefore creating an increase in the electric bill.

CRA Project Manager Richard Pittman explained that the estimate of \$2,200,000.00 was based on approximately 360 new poles throughout the Town spaced on residential streets every 160 feet staggered to give 300 feet of spacing on each side. The Town would pay for energy costs only. With the current FPL system, the Town pays an energy usage, maintenance on the pole and there would be a fuel adjustment dependent upon what FPL pays for their fuel. He stated that he did not have all of the figures yet on what the Town would save by converting to LED.

Commissioner Rumsey asked that it would be an estimate of approximately \$450 per pole per year.

Finance Director Anne Costello explained that the figures she came up with were \$7 per month per pole for approximately 360 poles which was roughly \$35,000 per year in energy costs.

Commissioner Osterman asked if there were any companies that insure the street lighting in the event of a hurricane.

Town Manager Maria Davis stated that the Town’s insurance company would insure the lighting poles and they would be considered Town assets.

Commissioner Rumsey asked what municipalities currently use LED lighting.

“Nazie” stated that LED lighting has been implemented in the City of West Palm Beach.

Commissioner Osterman stated that she was very encouraged by the cost estimates and prices of the LED lights. She asked if the LED lights suffer from the high heat that they emit.

“Nazie” explained that the newer LED lights have come a long way and do not suffer from the heat as much as they used to.

Vice-Mayor Carey asked if the LED lighting system would take two years to be installed.

Town Manger Maria Davis stated that it would take approximately two years to install the LED lights.

“Nazie” stated that she had a supplier of LED lights who offered to let the Town have a block worth of LED lights to try and test out before deciding on what types of lights and wattage to use.

Vice-Mayor Daly asked if the block could by installed and lit by March.

“Nazie” explained that it was possible to have it done by March. She stated that it took approximately six weeks to receive the fixtures.

Town Manager Maria Davis recommended having a short term lease with FPL for the 200 block of Bayberry Drive and having the 300 block of Bayberry Drive installed with the LED lighting to have a side by side comparison.

Discussion ensued between the Commissioners regarding the LED lighting.

Town Manager Maria Davis asked how soon the lights and lighting fixtures could be obtained.

Commissioner Daly asked how long it would take to get the lighting installed on the test street.

“Nazie” explained that the lighting could be done in phases and the entire installation would take approximately six weeks if all of the material was in place.

**Public Comment Open.**

*None*

**Public Comment Closed.**

**Motion: A motion was made by Commissioner Rumsey to authorize “Nazie” to explore the opportunities with the manufacturer to put in a block of street lighting as a test and then discuss the FPL option later in the meeting and to have Town staff draft language for a referendum question; Commissioner Osterman made the second.**

Vote on Motion:

| Commission Member   | Aye | Nay | Other |
|---------------------|-----|-----|-------|
| Commissioner Rumsey | X   |     |       |
| Commissioner        |     |     |       |

|                          |   |  |  |
|--------------------------|---|--|--|
| Daly                     | X |  |  |
| Commissioner<br>Osterman | X |  |  |
| Vice-Mayor<br>Carey      | X |  |  |
| Mayor<br>DuBois          | X |  |  |

Motion passed 5-0.

**BOARD APPOINTMENT**

**Robert Dow – Library Board**

Mr. Dow introduced himself and read an excerpt from “The Hobbits”. He gave a brief explanation of his background and credentials.

Mr. Robert Dow was appointed as an alternate member of the Library Board.

**PUBLIC and OTHER COMMENT**

*Steve Hockman, 639 Flagler Dr.* - stated that he was disappointed that he has not heard any comments or answers to his complaints and the complaints of residents regarding the parking meter issue. He stated that “Nazie” did a great job with her presentation. He stated that the Town should stay with the FPL lighting system. He stated that the LED lighting system was more expensive to install initially and that he felt that the Town could not afford to install them right now. He expressed his concerns regarding the installation of LED lighting in the Town.

*Genanne Doughty, 1008 7<sup>th</sup> St.* – read a prepared statement regarding the “Friends of the Library”. She gave a history of the hiring and accomplishments of Grants Writer Virginia Martin. She gave a list of activities and discussions that have taken place at the Library. She stated that there were many grants that the Town was eligible to tap into in order to provide services to the Town through the Library.

**CONSENT AGENDA:**

1. Special Call Commission Meeting Minutes of October 7, 2009
2. Resolution No. 53-11-09 Auction of Surplus Equipment
3. Resolution No. 54-11-09 Disadvantage Business Enterprise (DBE)/Minority Business Enterprise (MBE) Policy Statement for the Local Agency Plan Certification by the Florida Department of Transportation

**Public Comment Open.**

*None*

**Public Comment Closed.**

**Motion: A motion was made by Commissioner Rumsey to approve the Consent Agenda;**

**Commissioner Daly made the second.**

Vote on Motion:

| Commission Member     | Aye | Nay | Other |
|-----------------------|-----|-----|-------|
| Commissioner Rumsey   | X   |     |       |
| Commissioner Daly     | X   |     |       |
| Commissioner Osterman | X   |     |       |
| Vice-Mayor Carey      | X   |     |       |
| Mayor DuBois          | X   |     |       |

Motion passed 5-0.

**DISCUSSION & POSSIBLE ACTION**

**Florida Power & Light Street Lighting Agreement to Install and Maintain Four Street Lights on Bayberry Drive**

Commissioner Rumsey stated that staff needed to determine whether or not FPL would agree to a short term lease for the street lighting on the 200 block of Bayberry Drive.

Town Manager Maria Davis stated that if FPL did not agree to a short term lease on the lighting she would need direction from the Commission on what to do.

Commissioner Rumsey stated that if FPL did not agree then they could look at the possibility of doing a comparison of the LED lighting with the 400 block of Bayberry or place the LED lighting on the 200 block of Bayberry instead of the 300 block to do the comparison.

Mayor DuBois agreed with Commissioner Rumsey's recommendation. She stated that they needed to wait to see what FPL would agree to and take it from there.

**COMMENTS BY COMMISSION, TOWN MANAGER, TOWN ATTORNEY**

**Commissioner Rumsey** thanked the Kiwanis Club for putting on the Halloween Event at the Marina the Friday before Halloween. He stated that he had heard from a number of residents that there was a problem with the sound on Channel 18 during meetings. He asked that staff investigate the problem.

**Vice- Mayor Carey** thanked the Kiwanis Club for the Halloween Event. He stated that residents have complained that there have been no events but when an event takes place, residents do not

show up. He recommended that advertising for events be improved. He recommended moving up the start time of Commission Meetings to 6:30 p.m.

**Mayor DuBois** stated that she was flexible with her time and she agreed that it was hard to begin meetings at 7:30 p.m.

**Commissioner Rumsey** stated that he would like to start the meetings earlier.

**Commissioner Daly** agreed that the meetings could start earlier.

**Commissioner Osterman** expressed her concerns with moving the meetings up to a time slot that would be too early for future Commissioners that may work and not be able to make it to the meetings at an earlier time.

**Vice-Mayor Carey** stated that the Commission has had a lot of Attorney-Client Sessions that begin at 6 p.m. and the Commission has made it a point to be there at that time.

**Commissioner Osterman** stated that the public was not a part of the Attorney-Client Sessions and she was concerned that residents would not be home in time to see the meetings on TV. She stated that the meetings should start no earlier than 6:30 p.m. but she would be more comfortable with them starting at 7 p.m.

**Vice-Mayor Carey** stated that any time would be better than 7:30 p.m.

**Mayor DuBois** asked Commissioner Rumsey what time he would be most comfortable with.

**Commissioner Rumsey** stated that 7 p.m. would be best as a compromise.

**Mayor DuBois** asked how the Commission should proceed with changing the time of the Commission Meetings.

**Town Manager Davis** stated that an Ordinance should be created with the flexibility of changing the time if needed in the future.

**Town Attorney Thomas Baird** stated that the Town code would have to be amended to reflect a uniform start time for the meetings so that the public knows when the meetings would take place.

**Mayor DuBois** directed Town Attorney Baird to draft an Ordinance to change the start time of the Regular Commission Meetings to 7 p.m.

**Commissioner Daly** recommended keeping the parking meter revenue in a separate account.

**Town Manager Davis** stated that the revenue from the parking meters was already being kept in a separate account. She stated that she asked Finance Director Anne Costello to set up separate line items for revenue and also for expenses.

**Commissioner Osterman** stated that last year National City Bank had sponsored the Martin Luther King Day Event and during that time last year National City Bank had announced that it was in the process of changing its name to PNC Bank and because of that there will be no funding for the 2010 Martin Luther King Event. She asked if anyone knew of sponsorship for the event to let her know but so far has been unsuccessful in obtaining sponsorship. She stated that Grants Writer Virginia Martin has secured a grant in the amount of \$7500 for the Town's Community Garden. She stated that anyone who was interested in the Community Garden to keep their eyes open for the Town's advertisements on Channel 18 and the Town newsletter.

**Commissioner Rumsey** asked what the amount of money was that was needed for the Martin Luther King Day of Dreams Event.

**Commissioner Osterman** stated that approximately \$5000 was the cost of the event last year but had asked for \$10,000 in order to expand the event next year.

**Town Manager Maria Davis** stated that the event cost approximately \$6500.

**Mayor DuBois** also thanked the Kiwanis Club for the Halloween Event. She stated that Mr. Hockman's request regarding parking meters had been provided to him by e-mail. She asked Genanne Doughty to come back and finish the second part of her presentation. She thanked Grants Writer Virginia Martin for all her hard work and effort.

**Town Attorney Thomas Baird** announced that a Reasonable Accommodation Hearing was conducted yesterday November 3, 2009 on the property located at 118 Jasmine Dr. The hearing lasted approximately 3 hours and the Special Magistrate indicated that she would accept proposed orders and render a decision on or before December 25, 2009. There was a lot of information provided and one of the things that came out of the meeting was that Ms. Aberns indicated that in addition to the current sober house on 303 Foresteria and the proposed property at 118 Jasmine Dr. she has two other properties which she is leasing and plans to submit applications on within the next week. He explained that the Town was aware of other properties that may be operating in a similar fashion and without a Reasonable Accommodation and the Town would be investigating those properties and their violations.

He stated that he made an observation with regards to Mr. Dow's remarks. He stated that another thing that Hobbits were very talented at was gardening and that if Mr. Dow were to know any Hobbits to please direct them to the Town's new Community Garden.

**Town Manager Maria Davis** congratulated Recreation Director Greg Dowling for a very successful Government Week Event. She thanked staff for taking the time to educate the students who attended the event.

**ADJOURNMENT**

There being no further business to come before the Commission and after a motion to adjourn by Commissioner Daly and seconded by Vice-Mayor Carey, and by unanimous vote, the meeting adjourned at 9:15 p.m.

\_\_\_\_\_  
Mayor DuBois

\_\_\_\_\_  
Deputy Clerk Jessica Shepherd

\_\_\_\_\_  
Town Clerk Vivian Lemley

Town Seal

Approved on this \_\_\_ of \_\_\_\_\_, 2009.

# TAB 2

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

Meeting Date: **December 16, 2009**

Agenda Item No. *Tab 2*

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

**SUBJECT:** Regular Commission Meeting Minutes of November 18, 2009.

**RECOMMENDED MOTION/ACTION:** Approve the Regular Commission Meeting Minutes of November 18, 2009.

Approved by Town Manager *W. Davis* Date: *12/2/09*

*Jessie Kabe*  
Deputy Clerk Date of Actual Submittal 11/18/09

|   |   |   |
|---|---|---|
| <b>Originating Department:</b><br>Town Clerk  | Costs: \$ N/A<br><br>Funding Source:<br><br>Acct. #   | <b>Attachments:</b>   |
| <b>Department Review:</b><br><input type="checkbox"/> City Attorney<br><input type="checkbox"/> Community Affairs _____<br><input type="checkbox"/> Community Development | <input type="checkbox"/> Finance _____<br><input type="checkbox"/> Fire Dept _____<br><input type="checkbox"/> Library _____<br><input type="checkbox"/> PBSO _____ | <input type="checkbox"/> Personnel _____<br><input type="checkbox"/> Public Works _____<br><input checked="" type="checkbox"/> Town Clerk <i>JmC</i><br><input type="checkbox"/> Town Manager _____ |
| <b>Advertised:</b><br>Date: _____<br>Paper: _____<br><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 _____<br>OR<br>Not applicable in this case <input checked="" type="checkbox"/> _____:<br><br>Please initial one.   |

**Summary Explanation/Background:**



**Minutes**  
**Town of Lake Park, Florida**  
**Regular Commission Meeting**  
**November 18, 2009 7:38 p.m.**  
**Town Commission Chambers, 535 Park Avenue**

The Town Commission met for the purpose of a Regular Commission Meeting on Wednesday, November 18, 2009 at 7:38 p.m. Present were Mayor DuBois, Vice-Mayor Carey, Commissioners Daly, Rumsey, and Osterman, Attorney Thomas Baird, and Town Clerk Vivian Lemley. Town Manager Maria Davis was absent.

Mayor DuBois led the invocation and the Pledge of Allegiance.  
Town Clerk Vivian Lemley performed the Roll Call.

**ADDITIONS/DELETIONS/APPROVAL OF AGENDA**

None

**Motion: A motion was made by Commissioner Rumsey to approve the Agenda; Vice-Mayor Carey made the second.**

Vote on Motion:

| Commission Member     | Aye | Nay | Other |
|-----------------------|-----|-----|-------|
| Commissioner Rumsey   | X   |     |       |
| Commissioner Daly     | X   |     |       |
| Commissioner Osterman | X   |     |       |
| Vice-Mayor Carey      | X   |     |       |
| Mayor DuBois          | X   |     |       |

Motion passed 5-0.

**PROCLAMATION**

**Merry Ann Catasus, Finance Employee in Recognition of 34 ½ Years of Service**

Mayor DuBois read the Proclamation.

Merry Ann Catasus accepted her Proclamation and thanked the Commission.

**PRESENTATION**

**American Cancer Society Relay for Life 2010**

Jenny Drozd, Community Representative with the Palm Beach Unit of the American Cancer Society thanked the Commission, Mayor and Human Resources Director Bambi McKibbon-Turner for their past support of the American Cancer Society Relay for Life. She announced that the 2010 American Cancer Society Relay would be taking place in Singer Island and Lake Park. She played a short video about the event. She explained the reason for the event and the ways that funds were raised by the event.

**PUBLIC and OTHER COMMENT**

None

**Public Comment Closed.**

**CONSENT AGENDA:**

1. Special Call Commission Meeting Minutes of October 21, 2009
2. Sober House Workshop Meeting Minutes of October 28, 2009
3. Resolution No. 55-11-09 Mayor to Sign Amended Hy-Byrd, Inc. Contract
4. Resolution No. 57-11-09 Final Budget Amendment for Fiscal Year 2008/2009
5. Resolution No. 58-11-09 FIND Grant Agreement Phase II Breakwater Project
6. Resolution No. 59-11-09 Job Description for Administrative Assistant II Position for the Community Development Department
7. Mayor's Letter for Lake Park Street Map and Resource Guide

Commissioner Daly requested that item # 5 be pulled from the Consent Agenda for discussion.

**Public Comment Open.**

*None*

**Public Comment Closed.**

**Motion: A motion was made by Vice-Mayor Carey to approve items 1 through 4 and items 6 and 7 of the Consent Agenda; Commissioner Rumsey made the second.**

Vote on Motion:

| Commission Member     | Aye | Nay | Other |
|-----------------------|-----|-----|-------|
| Commissioner Rumsey   | X   |     |       |
| Commissioner Daly     | X   |     |       |
| Commissioner Osterman | X   |     |       |

|                     |   |  |  |
|---------------------|---|--|--|
| Vice-Mayor<br>Carey | X |  |  |
| Mayor<br>DuBois     | X |  |  |

Motion passed 5-0.

Commissioner Daly stated that he disagreed with spending additional monies at the Marina for a project that would be in progress while a lawsuit was pending at the Marina. He expressed his views and concerns about beginning any new projects at the Marina.

Commissioner Rumsey asked if the grant for the Marina would be lost if they did not approve it that night. He asked how long the grant money was good for.

Mayor DuBois stated that the grant money was in hand and it would not be a good idea to pass it up.

Grants Writer Virginia Martin stated that \$349,000 has been granted to the Town and if the agreement is not returned by December the Town would lose the grant. The matching funds for the grant currently are awaiting approval from the Florida Fish and Wildlife Commission BIGP Grant and from the DEP Land and Water Conservation Grant which would be the match that would not require any local dollars. In the event that either one or both of those grants are not awarded, the project would qualify for 100% funding through the US Department of Agriculture RBEG Grant Program.

Commissioner Rumsey asked when the Town would hear back about the two grants.

Grants Writer Virginia Martin stated that she expected to hear back on the two grants any day and explained the contingencies of the grants.

**Public Comment Open.**

*None*

**Public Comment Closed.**

**Motion: A motion was made by Commissioner Rumsey to approve item number 5 of the Consent Agenda; Commissioner Osterman made the second.**

Vote on Motion:

| Commission Member   | Aye | Nay | Other |
|---------------------|-----|-----|-------|
| Commissioner Rumsey | X   |     |       |
| Commissioner Daly   |     | X   |       |
| Commissioner        |     |     |       |

|                     |   |  |  |
|---------------------|---|--|--|
| Osterman            | X |  |  |
| Vice-Mayor<br>Carey | X |  |  |
| Mayor<br>DuBois     | X |  |  |

Motion passed 4-1.

**ORDINANCE ON 1<sup>ST</sup> READING**

**ORDINANCE NO. 17-2009 – Changing the Time of the Regular Commission Meetings  
AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE  
PARK, FLORIDA, AMENDING CHAPTER 2, DIVISION 2, SECTION 2-51, OF  
THE TOWN CODE ENTITLED “MEETINGS” TO CHANGE THE TIME  
REGULAR MEETINGS OF THE TOWN COMMISSION BEGIN; PROVIDING  
FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN  
CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN  
EFFECTIVE DATE.**

Mayor DuBois explained the reason for Ordinance No. 17-2009.

**Public Comment Open.**

*None*

**Public Comment Closed.**

**Motion: A motion was made by Commissioner Daly to approve the Ordinance No. 17-2009;  
Commissioner Rumsey made the second.**

Vote on Motion:

| Commission<br>Member     | Aye | Nay | Other |
|--------------------------|-----|-----|-------|
| Commissioner<br>Rumsey   | X   |     |       |
| Commissioner<br>Daly     | X   |     |       |
| Commissioner<br>Osterman | X   |     |       |
| Vice-Mayor<br>Carey      | X   |     |       |
| Mayor<br>DuBois          | X   |     |       |

Motion passed 5-0.

Attorney Thomas Baird read Ordinance No. 17-2009 by caption-only.

**COMMENTS BY COMMISSION, TOWN MANAGER, TOWN ATTORNEY**

**Commissioner Rumsey** announced that the Library was sponsoring a "Food for Fines" program where they will be accepting food in place of a monetary fine for overdue books. The food will be given to local food banks. He stated that monetary donations are also being accepted.

He asked if anyone could explain what happened with the Town's recycling schedule on the week of Veterans Day.

**Public Works Director Michael Arnold** explained that the Town's normal scheduled recycling day was every Wednesday. He stated that since Veteran's Day fell on a Wednesday this year recycling could not be collected and the word did not get out in time to inform residents that recycling would not be collected until the following Wednesday. He stated that the matter was discussed internally and a decision was made to collect on the Friday following Veteran's Day. He stated that as far as he knew there was only one resident who called to express concern.

**Commissioner Rumsey** stated that it was his understanding that if trash or recycling pick up fell on a holiday that the pickup would occur the very next day.

**Public Works Director Michael Arnold** stated that it may have been his misunderstanding and explained that trash was normally picked up on Mondays and Thursdays, and if a holiday would fall on either of those days the trash would be picked up the following day which would fall on either a Tuesday or Friday.

**Commissioner Rumsey** asked which day would Public Works pick up trash since Thanksgiving would fall on a Thursday next week.

**Public Works Director Michael Arnold** explained that trash would be picked up on the Friday after Thanksgiving.

**Commissioner Rumsey** asked if recycling would be picked up on Wednesday since it would be a Town holiday.

**Public Works Director Michael Arnold** stated that the recycling would be picked up the following Wednesday.

**Commissioner Daly** expressed his concerns with skipping a week to pick up recycling.

**Commissioner Rumsey** also expressed concern regarding the recycling pick up and asked if the Town residents would be informed.

**Public Works Director Michael Arnold** explained that the same mistake would not be made twice and the announcement would be advertised on the Town's website, in the Palm Beach Post, and a possible e-blast.

**Mayor DuBois** stated that it was her understanding that when recycling and trash pickup days fall on a holiday that the pickup would occur the very next day.

**Commissioner Rumsey** stated that the recycling would need to be picked up on its normal pickup day of Wednesday.

Discussion ensued between the Commissioners and Public Works Director regarding the trash and recycling pick up days.

**Commissioner Rumsey** asked what would happen if the Public Works employees had to work on a scheduled furlough day.

**Finance Director Anne Costello** explained that a bargaining session would have to take place with the union since an agreement was already made for the scheduled furlough days and if a change was made then another meeting would need to take place with union representatives.

**Commissioner Osterman** recommended that the matter be addressed next year.

**Commissioner Rumsey** asked that the public be made aware as much as possible that there would be no recycling pick up next week.

**Town Clerk Vivian Lemley** explained that they had made sure that the public was made aware by advertising the announcement in the Palm Beach Post, on the Town's website, Channel 18, the Town Calendar and the Town Hall marquee.

**Vice-Mayor Carey** asked if an e-mail blast could be sent out as well.

**Town Clerk Vivian Lemley** stated that an e-blast could be sent.

**Public Works Director Michael Arnold** explained that both Christmas and New Years Day fall on a Friday and trash is not picked up on those days and notices are not required for those holidays.

**Commissioner Rumsey** asked if any furlough days fell between the Christmas and New Year's holidays.

**Public Works Director Michael Arnold** stated that there were no furlough days between the Christmas and New Year's holidays.

**Commissioner Rumsey** stated that he and Public Works Director Michael Arnold had a conversation earlier in the week regarding the new parking spaces at the Marina. He stated that the new parking spaces were originally approved to go into the green space 18 inches. He stated that the parking spaces have been installed without the 18 inches. He asked when the parking spaces would be paved at the Marina and when they would carve out the 18 inches.

**Public Works Director Michael Arnold** stated that the plan was to add an additional 18 inches of pavement in order to get a wide enough driveway around the entire perimeter of the Marina to provide additional parallel parking spaces. He stated that he met with Marina Director Michael Pisano last Friday and he expressed concern that on a typical weekend patrons were parking all over the Marina. He stated that he didn't want to run into a situation where the patrons who parked in the metered spaces would be charged and those in the parallel spaces would not. After discussion with Town Manager Maria Davis the decision was made to put the spaces in now. He explained how the installation of the new parking spaces would look and work logistically.

**Commissioner Rumsey** asked that if once the 18 inches were carved out would there be an additional 18 inches, or would the spaces be moved back more.

**Public Works Director Michael Arnold** explained the installation of the parking spaces.

**Commissioner Rumsey** stated that the new parking spaces were very narrow and he's had trouble getting in and out especially with one particular space on the end.

**Public Works Director Michael Arnold** stated that he had the same concerns about the parking spaces and stated that he would look at the space on the end to see if there could be an alternate solution.

**John Downs of Calvin, Giordano and Associates** gave a status update on the permit submitted to the DEP for the installation of the new parking spaces at the Marina.

**Commissioner Daly** asked what would happen in the case of an emergency vehicle coming through the Marina parking lot.

**John Downs of Calvin, Giordano and Associates** stated that he believed that a fifteen foot emergency easement would be needed. He stated that he would suggest to the driver of the fire truck to come in from the outbound side.

**Information Technology Director Hoa Hoang** stated that the Fire Department approved and signed off on the plans.

**Commissioner Daly** expressed his concerns regarding the parking spaces at the Marina.

**Commissioner Rumsey** asked if Mr. Downs was comfortable with the design of the parking spaces at the Marina.

**John Downs of Calvin, Giordano and Associates** stated that he had not yet reviewed the design.

**Commissioner Rumsey** asked Mr. Downs to drive down to the Marina to see the design.

**Commissioner Rumsey** expressed his condolences to Town Manager Maria Davis who lost her mother in the past week. He wished her the best and stated that she was in his prayers. He wished everyone a Happy Thanksgiving.

**Vice-Mayor Carey** wished everyone a Happy Thanksgiving and asked everyone to be safe while traveling. He stated that the Town was having the Holiday Boat Parade and other events would also be taking place.

**Commissioner Daly** wished everyone a Happy Holiday.

**Commissioner Osterman** stated that residents should check out the Town's new website. She stated that there was a new design and had a lot of great information and photos. She stated that she had received information from a company that does text alerts. She asked Mayor DuBois to explain.

**Mayor DuBois** explained that it was a service that would alert people by text message of a crime or other emergency.

**Commissioner Osterman** stated that she sent the information to staff to look into possibly using the service. She announced the Town's Tree Lighting Ceremony on December 4, 2009 and later that night the Town will have its first neighborhood Safety Walk where they will be memorializing Mr. Atilus, the ice cream man that was killed last year. She stated that there will be a total of five walks spread throughout the Town. There will be one in December, two in January and then two again in February in different neighborhoods. They will meet at the corner of 8<sup>th</sup> St. and Foresteria Drive at 5:30 p.m. and walk around the neighborhood and end up back at the tree for the lighting ceremony. She also announced a benefit being held at the Lake Park Chick Fil A on Friday night, November 20<sup>th</sup>, for a little girl named Donna Costanche who was diagnosed with stage four cancer at the age of eight months. She has been battling cancer for the last six months. Chick Fil A will have bounce houses and entertainment for the children. She wished everyone a Happy Holiday.

**Mayor DuBois** stated that it has not been the easiest year but Lord willing the Town has made it through and is going in the right direction. She stated that she wanted everyone to have a wonderful holiday and to be thankful for what they have and thankful for their families.

**Attorney Thomas Baird** stated that he was thankful for the opportunity to continue to represent the Town and he wished everyone a Happy Thanksgiving.

**Information Technology Director Hoa Hoang on behalf of Town Manager Maria Davis** stated that the Town's new website was complete and to let him know if there were any issues with it. He announced Elementary Art Classes on November 21<sup>st</sup> and December 19<sup>th</sup> at 10 a.m. to Noon at Lake Shore Park Pavilion. The Marine Industry Association of Palm Beach County will be holding the Toys for Tots Collection at three sites. Toys will be collected at the Marina, Town Hall, and the Library until November 28<sup>th</sup>. The Holiday Tree Lighting Ceremony is taking place on December 4<sup>th</sup>. The 2009 Palm Beach Holiday Boat Parade will be taking place on December 5<sup>th</sup> from 6 p.m. to 8 p.m. The Town is the First Mate Sponsor and there will be a

Family Fun Festival at Kelsey Park from 3 p.m. to 8 p.m. There will also be a 6<sup>th</sup> annual Santa Claus ride on December 19<sup>th</sup>. He stated that since there is a holiday and furlough day combined next week which would give employees almost the entire week off, Town Manager Davis was requesting that the two Regular Commission Meetings in December be combined into one meeting on December 16<sup>th</sup> since there would not be enough time to put an agenda together for the regularly scheduled meeting of December 2<sup>nd</sup>.

**The Commission came to consensus to combine the two regularly scheduled Commission meetings in December into one meeting on December 16, 2009.**

**ADJOURNMENT**

There being no further business to come before the Commission and after a motion to adjourn by Commissioner Osterman and seconded by Vice-Mayor Carey, and by unanimous vote, the meeting adjourned at 8:30 p.m.

---

Mayor DuBois

---

Deputy Clerk Jessica Shepherd

---

Town Clerk Vivian Lemley

Town Seal

Approved on this \_\_\_ of \_\_\_\_\_, 2009.

# TAB 3

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

Meeting Date: December 16, 2009

Agenda Item No. *Tab 3*

- |  |  |
|--|--|
| <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:** Settlement of 4.14.09 Vehicular Accident

**RECOMMENDED MOTION/ACTION:** Approval of Settlement Amount

Approved by Town Manager *W. Davis* Date: *12/9/09*  
*Benji McElroy-Lucas* *12/8/09*  
 Name/Title *HR Director* Date of Actual Submittal

|   |  |   |
|---|--|---|
| <b>Originating Department:</b><br>Human Resources   | <b>Costs:</b> \$25,000.00<br><br><b>Funding Source:</b> Insurance Fund<br><br><b>Acct. #</b> 105-51-589-900-49500  | <b>Attachments:</b>   |
| <b>Department Review:</b><br><input type="checkbox"/> Community Affairs _____<br><input type="checkbox"/> Community Development _____<br><input type="checkbox"/> Finance _____ | <input type="checkbox"/> Fire Dept _____<br><input type="checkbox"/> Human Resources _____<br><input type="checkbox"/> Library _____<br><input type="checkbox"/> Marina _____<br><input type="checkbox"/> PBSO _____ | <input type="checkbox"/> Public Works _____<br><input type="checkbox"/> Town Attorney _____<br><input type="checkbox"/> Town Clerk _____<br><input type="checkbox"/> Town Manager _____ |
| <b>Advertised:</b><br>Date: _____<br>Paper: _____<br><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 _____<br>OR<br>Not applicable in this case <u>BMT</u> :<br><br>Please initial one.   |

**Summary Explanation/Background:**

**On April 14, 2009, Public Works Vehicle No. 64 backed into a 1991 Toyota van driven by a Lake Park resident. The driver was cited by PBSO for improper backing. The resident sustained personal injuries and her vehicle was totaled. Florida League of Cities has recommended settlement of this claim in the amount of \$30,000, of which the Town is responsible to pay a \$25,000 deductible amount. The purpose of this item is to obtain authorization from the Commission to authorize the \$30,000 settlement amount. Funds in the amount of \$25,000 are budgeted in the insurance fund to cover the Town's annual deductible. Additionally, there is a \$40,000 insurance reserve fund balance.**

# TAB 4

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

Meeting Date: December 16, 2009

Agenda Item No. Tab 4

- |   |  |
|---|--|
| <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:** 2010 Community Development Block Grant Application

**RECOMMENDED MOTION/ACTION:** Approve submission

**Approved by Town Manager** Ne. Davis **Date:** 12/8/09

Virginia Martin/Grants Writer  
Name/Title

December 7, 2009  
Date of Actual Submittal

|   |   |   |
|---|---|---|
| <b>Originating Department:</b><br>Grants  | Costs: \$ 75,000<br>Funding Source: COMMUNITY DEVELOPMENT BLOCK GRANT<br>Acct. #  | <b>Attachments:</b><br>Resolution   |
| <b>Department Review:</b><br><input type="checkbox"/> Community Affairs _____<br><input type="checkbox"/> Community Development _____<br><input type="checkbox"/> Finance _____ | <input type="checkbox"/> Fire Dept _____<br><input checked="" type="checkbox"/> Grants <u>GM</u> _____<br><input type="checkbox"/> Human Resources _____<br><input type="checkbox"/> Library _____<br><input type="checkbox"/> Marina _____ | <input type="checkbox"/> PBSO _____<br><input type="checkbox"/> Public Works _____<br><input type="checkbox"/> Town Attorney _____<br><input type="checkbox"/> Town Clerk _____<br><input checked="" type="checkbox"/> Town Manager _____ |
| <b>Advertised:</b><br>Date: _____<br>Paper: _____<br><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 _____<br>OR<br>Not applicable in this case <u>GM</u><br>Please initial one.  |

**Summary Explanation/Background:**

Lake Park has an Interlocal agreement with Palm Beach County to be part of the annual PBC Housing & Urban Development grant application for Community Development Block Grant funds. We are able to use these funds as we deem fit, as long as they fit within the HUD guidelines for use of funds. This year, we are requesting funds to demolish and replace restroom/storage facility at the ballfields. We have completed the new fencing, lighting, and security cameras at the field, and this improvement vastly improve the utility of the park as a public recreation facility, and provide residents with a more attractive recreation area. We believe these improved amenities will encourage more residents to use the recreational facilities available on site.

**RESOLUTION NO. 60-12-09**

**A RESOLUTION OF THE TOWN COMMISSION OF  
THE TOWN OF LAKE PARK, FLORIDA  
AUTHORIZING ALL FUNDS ALLOCATED BY  
PALM BEACH COUNTY HOUSING AND  
COMMUNITY DEVELOPMENT TO THE TOWN OF  
LAKE PARK FOR THE 2010-11 COMMUNITY  
DEVELOPMENT BLOCK GRANT BE USED  
TOWARD THE BALLFIELD IMPROVEMENT  
PROJECT.**

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

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

**WHEREAS**, the project falls under two of the three categories of eligible activities as defined by HUD, in as much as the Ballfields Improvement Project will:

- (1) benefit low and moderate income persons;
- (2) activities to prevent slum or blight on an area designated as such by the County or the State.

**WHEREAS**, the Ballfields Improvement Project lies entirely within a public area that is used by and available to the entire community and the general public for recreation; and

**WHEREAS**, the Ballfields Improvement Project falls in the Lake Park Target area as designated by Palm Beach County Housing and Community Development in their long range action plan.

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

**SECTION 1.** The Town Commission authorizes and directs the Town Manager to submit the Community Development Block Grant application;

**SECTION 2.** All funds derived from this grant will be used toward completion of the Ballfields Improvement Project.

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

# TAB 5

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

**Meeting Date:** December 16, 2009

**Agenda Item No.** *Tab 5*

- |  |   |
|--|---|
| <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"/> <b>CONSENT AGENDA</b> |
| <input type="checkbox"/> GENERAL APPROVAL OF ITEM    |   |
| <input type="checkbox"/> Other:                      |   |

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

**RECOMMENDED MOTION/ACTION: Approve**

**Approved by Town Manager** *W. J. Lewis* **Date:** *12/18/09*

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Date of Actual Submittal

|   |  |   |
|---|--|---|
| <b>Originating Department:</b><br>Town Manager  | <b>Costs: \$78,005.14</b><br>Funding Source: Marina<br>Construction Deficiency<br>Account<br>Acct. #   | <b>Attachments:</b><br>Bid Tabulation Sheet<br>Letter from Engineer<br>Contract and Front End<br>Documents  |
| <b>Department Review:</b><br><input type="checkbox"/> Town Attorney _____<br><input type="checkbox"/> Community Affairs _____<br><input type="checkbox"/> Community Development _____ | <input type="checkbox"/> Finance _____<br><input type="checkbox"/> Fire Dept _____<br><input type="checkbox"/> Library _____<br><input type="checkbox"/> Marina _____<br><input type="checkbox"/> PBSO _____ | <input type="checkbox"/> Personnel _____<br><input type="checkbox"/> Public Works _____<br><input type="checkbox"/> Town Clerk _____<br><input type="checkbox"/> Town Manager _____ |
| <b>Advertised:</b><br>Date: _____<br>Paper: _____<br><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 _____<br>OR<br>Not applicable in this case _____:<br><br>Please initial one.   |

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

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

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

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



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

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

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

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

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

Vivian Lemley thanked everyone for being present.

**ADJOURNMENT:**

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

  
Town Clerk Vivian Lemley

# ***Cutcher & Associates, Inc.***

## ***Coastal Engineers***

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

752 North US Hwy 1.  
Tequesta, FL 33469

December 2, 2009

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

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

Maria:

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

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

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

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

Sincerely,

*Robert Cutcher*

Robert Cutcher, P.E.

**charles zatreparek**

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

Charles,

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

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

*17 Dec or sooner with a contract*

Start date 

Finish date  
*27 Working Days*  
*21 JAN 2010*

Thank you for your consideration in this manner.  
Please contact me with any questions.  
Sincerely,



Robert Cutcher, P.E



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

11757009

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

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

**Article 1. WORK.**

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

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

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

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

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

**Article 2. ENGINEER.**

The Project has been designed by

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

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

**Article 3. CONTRACT TIMES.**

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

**Article 4. CONTRACT PRICE.**

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

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

|   |                    |
|---|--------------------|
| <u>seventy eight thousand and five dollars and fourteen cents</u> | <u>\$78,005.14</u> |
| (use words)   | (figures)          |

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

**Article 5. PAYMENT PROCEDURES.**

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

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

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

**Article 6. INTEREST.**

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

**Article 7. CONTRACTOR'S REPRESENTATIONS.**

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

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

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

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

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

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

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

**Article 8. CONTRACT DOCUMENTS.**

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

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

8.2. Exhibits to this Agreement (    pages)

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

8.4. Notice to Proceed.

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

8.6 Intentionally omitted

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

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

8.8. Addenda numbers \_\_\_\_ to \_\_\_\_, inclusive.

8.9. Intentionally omitted

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

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

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

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

**Article 9. MISCELLANEOUS.**

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

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

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

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

9.5. OTHER PROVISIONS (none)

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

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

OWNER Town of Lake Park

CONTRACTOR Arch Enterprises, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices

Addresses for giving notices

Ms. Maria Davis – Town Manager

Charles Zatrepaek

Town of Lake Park

145 Monterey Point Drive

535 ParkAve.

Palm Beach Gardens, FL 33418

Lake Park, Florida 33403

(561) 718 - 5331

License No. CGC034041

Agent for service of process: \_\_\_\_\_

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

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

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly by



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ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

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*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

## TABLE OF CONTENTS

|   | <b>Page</b> |
|---|-------------|
| Article 1 – Definitions and Terminology.....  | 1           |
| 1.01 Defined Terms.....   | 1           |
| 1.02 Terminology.....   | 5           |
| Article 2 – Preliminary Matters.....  | 6           |
| 2.01 Delivery of Bonds and Evidence of Insurance.....   | 6           |
| 2.02 Copies of Documents.....   | 6           |
| 2.03 Commencement of Contract Times; Notice to Proceed.....   | 6           |
| 2.04 Starting the Work.....   | 7           |
| 2.05 Before Starting Construction.....  | 7           |
| 2.06 Preconstruction Conference; Designation of Authorized Representatives.....   | 7           |
| 2.07 Initial Acceptance of Schedules.....   | 7           |
| Article 3 – Contract Documents: Intent, Amending, Reuse.....  | 8           |
| 3.01 Intent.....  | 8           |
| 3.02 Reference Standards.....   | 8           |
| 3.03 Reporting and Resolving Discrepancies.....   | 9           |
| 3.04 Amending and Supplementing Contract Documents.....   | 9           |
| 3.05 Reuse of Documents.....  | 10          |
| 3.06 Electronic Data.....   | 10          |
| Article 4 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental<br>Conditions; Reference Points..... | 11          |
| 4.01 Availability of Lands.....   | 11          |
| 4.02 Subsurface and Physical Conditions.....  | 11          |
| 4.03 Differing Subsurface or Physical Conditions.....   | 12          |
| 4.04 Underground Facilities.....  | 13          |
| 4.05 Reference Points.....  | 14          |
| 4.06 Hazardous Environmental Condition at Site.....   | 14          |
| Article 5 – Bonds and Insurance.....  | 16          |
| 5.01 Performance, Payment, and Other Bonds.....   | 16          |
| 5.02 Licensed Sureties and Insurers.....  | 16          |
| 5.03 Certificates of Insurance.....   | 17          |
| 5.04 Contractor’s Insurance.....  | 17          |
| 5.05 Owner’s Liability Insurance.....   | 19          |
| 5.06 Property Insurance.....  | 19          |
| 5.07 Waiver of Rights.....  | 20          |
| 5.08 Receipt and Application of Insurance Proceeds.....   | 21          |

|   |   |    |
|---|---|----|
| 5.09  | Acceptance of Bonds and Insurance; Option to Replace .....    | 21 |
| 5.10  | Partial Utilization, Acknowledgment of Property Insurer ..... | 22 |
| <b>Article 6 – Contractor’s Responsibilities.....</b>         |   |    |
| 6.01  | Supervision and Superintendence .....                         | 22 |
| 6.02  | Labor; Working Hours .....                                    | 22 |
| 6.03  | Services, Materials, and Equipment .....                      | 22 |
| 6.04  | Progress Schedule .....                                       | 23 |
| 6.05  | Substitutes and “Or-Equals” .....                             | 23 |
| 6.06  | Concerning Subcontractors, Suppliers, and Others .....        | 25 |
| 6.07  | Patent Fees and Royalties.....                                | 27 |
| 6.08  | Permits.....  | 27 |
| 6.09  | Laws and Regulations .....                                    | 28 |
| 6.10  | Taxes.....  | 28 |
| 6.11  | Use of Site and Other Areas.....                              | 28 |
| 6.12  | Record Documents .....  | 29 |
| 6.13  | Safety and Protection.....                                    | 29 |
| 6.14  | Safety Representative.....                                    | 30 |
| 6.15  | Hazard Communication Programs.....                            | 30 |
| 6.16  | Emergencies .....   | 30 |
| 6.17  | Shop Drawings and Samples .....                               | 31 |
| 6.18  | Continuing the Work.....                                      | 32 |
| 6.19  | Contractor’s General Warranty and Guarantee .....             | 33 |
| 6.20  | Indemnification .....   | 33 |
| 6.21  | Delegation of Professional Design Services.....               | 34 |
| <b>Article 7 – Other Work at the Site .....</b>               |   |    |
| 7.01  | Related Work at Site .....                                    | 35 |
| 7.02  | Coordination.....   | 35 |
| 7.03  | Legal Relationships.....                                      | 36 |
| <b>Article 8 – Owner’s Responsibilities.....</b>              |   |    |
| 8.01  | Communications to Contractor.....                             | 36 |
| 8.02  | Replacement of Engineer .....                                 | 36 |
| 8.03  | Furnish Data .....  | 36 |
| 8.04  | Pay When Due.....   | 36 |
| 8.05  | Lands and Easements; Reports and Tests.....                   | 36 |
| 8.06  | Insurance.....  | 36 |
| 8.07  | Change Orders.....  | 37 |
| 8.08  | Inspections, Tests, and Approvals.....                        | 37 |
| 8.09  | Limitations on Owner’s Responsibilities.....                  | 37 |
| 8.10  | Undisclosed Hazardous Environmental Condition .....           | 37 |
| 8.11  | Evidence of Financial Arrangements.....                       | 37 |
| 8.12  | Compliance with Safety Program .....                          | 37 |
| <b>Article 9 – Engineer’s Status During Construction.....</b> |   |    |
| 9.01  | Owner’s Representative .....                                  | 37 |

|  |   |    |
|--|---|----|
| 9.02   | Visits to Site .....  | 37 |
| 9.03   | Project Representative.....   | 38 |
| 9.04   | Authorized Variations in Work.....  | 38 |
| 9.05   | Rejecting Defective Work.....   | 38 |
| 9.06   | Shop Drawings, Change Orders and Payments .....                                 | 39 |
| 9.07   | Determinations for Unit Price Work.....   | 39 |
| 9.08   | Decisions on Requirements of Contract Documents and Acceptability of Work ..... | 39 |
| 9.09   | Limitations on Engineer's Authority and Responsibilities .....                  | 39 |
| 9.10   | Compliance with Safety Program .....  | 40 |
| Article 10 – Changes in the Work; Claims.....  |   | 40 |
| 10.01  | Authorized Changes in the Work.....   | 40 |
| 10.02  | Unauthorized Changes in the Work.....   | 41 |
| 10.03  | Execution of Change Orders .....  | 41 |
| 10.04  | Notification to Surety .....  | 41 |
| 10.05  | Claims.....   | 41 |
| Article 11 – Cost of the Work; Allowances; Unit Price Work .....                             |   | 42 |
| 11.01  | Cost of the Work .....  | 42 |
| 11.02  | Allowances .....  | 45 |
| 11.03  | Unit Price Work .....   | 45 |
| Article 12 – Change of Contract Price; Change of Contract Times.....                         |   | 46 |
| 12.01  | Change of Contract Price .....  | 46 |
| 12.02  | Change of Contract Times .....  | 47 |
| 12.03  | Delays .....  | 47 |
| Article 13 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work..... |   | 48 |
| 13.01  | Notice of Defects.....  | 48 |
| 13.02  | Access to Work .....  | 48 |
| 13.03  | Tests and Inspections .....   | 49 |
| 13.04  | Uncovering Work.....  | 49 |
| 13.05  | Owner May Stop the Work .....   | 50 |
| 13.06  | Correction or Removal of Defective Work .....                                   | 50 |
| 13.07  | Correction Period .....   | 50 |
| 13.08  | Acceptance of Defective Work.....   | 51 |
| 13.09  | Owner May Correct Defective Work.....   | 52 |
| Article 14 – Payments to Contractor and Completion .....                                     |   | 52 |
| 14.01  | Schedule of Values.....   | 52 |
| 14.02  | Progress Payments.....  | 52 |
| 14.03  | Contractor's Warranty of Title.....   | 55 |
| 14.04  | Substantial Completion .....  | 55 |
| 14.05  | Partial Utilization .....   | 56 |
| 14.06  | Final Inspection .....  | 57 |
| 14.07  | Final Payment.....  | 57 |
| 14.08  | Final Completion Delayed .....  | 58 |

|  |    |
|--|----|
| 14.09 Waiver of Claims .....                         | 58 |
| Article 15 – Suspension of Work and Termination..... | 59 |
| 15.01 Owner May Suspend Work.....                    | 59 |
| 15.02 Owner May Terminate for Cause.....             | 59 |
| 15.03 Owner May Terminate For Convenience .....      | 60 |
| 15.04 Contractor May Stop Work or Terminate.....     | 60 |
| Article 16 – Dispute Resolution .....                | 61 |
| 16.01 Methods and Procedures .....                   | 61 |
| Article 17 – Miscellaneous .....                     | 61 |
| 17.01 Giving Notice .....                            | 61 |
| 17.02 Computation of Times .....                     | 62 |
| 17.03 Cumulative Remedies .....                      | 62 |
| 17.04 Survival of Obligations .....                  | 62 |
| 17.05 Controlling Law .....                          | 62 |
| 17.06 Headings .....                                 | 62 |

## 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 6

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

Meeting Date: December 16, 2009

Agenda Item No. *Tab 6*

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

**SUBJECT:** Resolution to Revise the Town of Lake Park Uniform Classification System to Add the Job Description for the Position Library Technical Assistant I

**RECOMMENDED MOTION/ACTION:** Adoption of Resolution and Job Description

Approved by Town Manager *W. Davis* Date: *12/11/09*

Name/Title \_\_\_\_\_ Date of Actual Submittal \_\_\_\_\_

|   |  |   |
|---|--|---|
| <b>Originating Department:</b><br>Human Resources   | Costs: \$ -0-<br>Funding Source:<br>Acct. 700  | <b>Attachments:</b><br>Copy of Resolution and Job Description   |
| <b>Department Review:</b><br><input type="checkbox"/> Community Affairs _____<br><input type="checkbox"/> Community Development _____<br><input type="checkbox"/> Finance _____ | <input type="checkbox"/> Fire Dept _____<br><input type="checkbox"/> Human Resources _____<br><input type="checkbox"/> Library _____<br><input type="checkbox"/> Marina _____<br><input type="checkbox"/> PPSO | <input type="checkbox"/> Public Works _____<br><input type="checkbox"/> Town Attorney _____<br><input type="checkbox"/> Town Clerk _____<br><input type="checkbox"/> Town Manager _____ |
| <b>Advertised:</b><br>Date: _____<br>Paper: _____<br><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 _____<br>OR<br>Not applicable in this case <u>  BMT  </u> :<br><br>Please initial one.   |

**Summary Explanation/Background:**

The purpose of this item is to include a new job description of Library Technical Assistant I in the Classification Plan to more accurately reflect the duties required within the department. It is necessary to respond to the technical needs, technology trends and library best practices, and to reflect the current skills and educational requirements of this position. The individual currently performing these duties is voluntarily vacating his position at the end of the year. Staff recommends a full time salary range of \$27,050.40 to \$42,507.99 for this position. This position will be filled on a part-time hourly basis. There will be no additional financial burden placed on the Library Budget.

**RESOLUTION No. 61-12-09**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, REVISING THE TOWN UNIFORM CLASSIFICATION SYSTEM TO ADD THE POSITION OF LIBRARY TECHNICAL ASSISTANT I; PROVIDING FOR THE PUBLICATION OF AN UPDATED UNIFORM CLASSIFICATION SYSTEM; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Lake Park is a duly constituted municipality organized and existing under the laws of the State of Florida and Chapter 166, Fla. Stat; and

**WHEREAS**, the Uniform Classification System is based upon similarity of duties performed and responsibilities assumed, so that the same qualifications are reasonably required for the same schedule of pay, and are equally applied to all positions in the same class; and

**WHEREAS**, it is necessary to provide an updated listing of certain current titles and classifications within the Town service,

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

**Section 1.** The foregoing recitals are hereby incorporated as if fully set forth herein.

**Section 2.** The Uniform Classification System is revised to add the position of Library Technical Assistant I. A copy of the job description for this position is attached hereto as Exhibit A.

**Section 3.** This Resolution shall become effective immediately upon adoption.

# LIBRARY TECHNICAL ASSISTANT I

EXHIBIT A

**JOB CODE:** 241  
**DEPARTMENT:** LAKE PARK PUBLIC LIBRARY

## CHARACTERISTICS OF THE CLASS:

Under the direct supervision of the Library Director, the primary responsibility of this position is the performance of technical maintenance and computer/Internet support for Library staff and patrons. Also responsible for performing circulation functions at the Circulation Desk and basic clerical activities in support of all Library services. Work is performed under immediate supervision and review, and within specific limits of prescribed procedures and/or defined instructions. Performs other work as requested. This is a non-exempt position.

## EXAMPLES OF ESSENTIAL FUNCTIONS:

The list of essential functions, as outlined herein, is intended to be representative of the tasks performed within this classification. It is not necessarily descriptive of anyone position in the class. The omission of an essential function does not preclude management from assigning duties not listed herein if such functions are a logical assignment to the Library Technical Assistant I position.

1. Performs routine maintenance on all computer equipment.
2. Troubleshoots and repairs personal computers including changing disk drives, CPU fans, peripherals, and memory.
3. Troubleshoots and repairs computer terminals.
4. Downloads, installs, and configures new/upgraded software upon approval by the Chief Information Technology Officer.
5. Provides instructional support to Library staff and patrons on the use of hardware and software applications.
6. Reports problems and coordinates non-routine maintenance and repair work with the Chief Information Technology Officer.
7. Works with technicians on-site to resolve problems and update skills.
8. Keeps adequate, detailed records of PC maintenance, configurations and procedures.
9. Maintains basic computer supplies and spare parts inventories.
10. Performs circulation functions at the Circulation Desk and basic clerical activities in support of all Library services including assisting patrons in locating materials, providing information to patrons, collecting fines for overdue books and materials, and resolving problems regarding patrons' circulation records...
10. Performs other duties as assigned or directed.

## MINIMUM REQUIREMENTS:

1. **Training and Experience:**

High school diploma, or GED and at least 12 credits of college computer science.  
Previous experience working with computer hardware and software preferred.

2. **Knowledge, Skills and Abilities:**

- Ability to identify solutions to problem involving a moderate degree of complexity.
- Ability to follow oral and written instructions.
- Ability to operate the computer keyboard and mouse, and a wide range of office equipment.
- Ability to complete shelving assignments with accuracy.
- Ability to establish and maintain effective and positive working relationships with the patrons, associates and other Town staff
- Ability to communicate effectively with a diverse population
- Ability to read, speak, write and understand the standard English language
- Ability to manage several projects at once and adapt to changing needs and to work with frequent interruptions and maximum flexibility
- Ability to maintain the cash register and shelve materials with accuracy
- Ability to maintain confidentiality
- Ability to work a varied work schedule

3. **Physical Requirements:**

Work is performed in a library environment. Heavy lifting (50 pounds), push/pull of 100 pound carts, constant standing, walking, extensive close work, and extensive PC monitor work are required. Dexterity in the use of fingers, limbs or body in the use of office equipment is also required,

4. **Environmental Requirements:**

Work is performed without exposure to adverse environmental conditions, e.g., dirt, cold, rain fumes, etc.

5. **Sensory Requirements:**

Work requires color and form perception and discrimination.

6. **Blood Borne Pathogens:**

Category II – Minimal to No Risk of Exposure

It is the policy of the Town of Lake Park to prohibit discrimination on the basis of race, color, religion, gender, national origin, age, political affiliation, physical or mental disability (where the disabled persons are able to perform the work they are seeking with reasonable accommodation), marital status, familial status, or sexual orientation, or any other form of unlawful discrimination, except when such condition is a bona fide occupational qualification. Such employment practices include, but are not limited to, the recruitment, hiring, compensation, assignment, training, promotion, demotion, discipline or dismissal of employees.

# TAB 7

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

**Meeting Date:** December 16, 2009

**Agenda Item No.** *Tab 7*

- |  |  |
|--|--|
| <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:** Resolution to Revise the Town of Lake Park Uniform Classification System to Amend the Job Description for the Position Library Assistant I.

**RECOMMENDED MOTION/ACTION:** Adoption of Resolution

**Approved by Town Manager** *Mr. Davis* **Date:** *12/11/09*

\_\_\_\_\_  
Name/Title Date of Actual Submittal

|   |  |   |
|---|--|---|
| <b>Originating Department:</b><br>Human Resources   | Costs: \$ -0-<br>Funding Source:<br>Acct. 700  | <b>Attachments:</b><br>Copy of Resolution and Job Description   |
| <b>Department Review:</b><br><input type="checkbox"/> Community Affairs _____<br><input type="checkbox"/> Community Development _____<br><input type="checkbox"/> Finance _____ | <input type="checkbox"/> Fire Dept _____<br><input type="checkbox"/> Human Resources _____<br><input type="checkbox"/> Library _____<br><input type="checkbox"/> Marina _____<br><input type="checkbox"/> PBSO _____ | <input type="checkbox"/> Public Works _____<br><input type="checkbox"/> Town Attorney _____<br><input type="checkbox"/> Town Clerk _____<br><input type="checkbox"/> Town Manager _____ |
| <b>Advertised:</b><br>Date: _____<br>Paper: _____<br><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 _____<br>OR<br>Not applicable in this case <u>BMT</u> :<br><br>Please initial one.   |

**Summary Explanation/Background:**

Currently, a job description exists in the Town of Lake Park Uniform Classification System entitled Library Assistant I. The purpose of this item is to revise this job description to more accurately reflect the current duties and requirements of this position as they have evolved in response to customer service trends and technical needs of the Library. This is part of a three-part Library classification plan revision that:

- 1) Revises and expands the current Library Assistant I job description to include and clarify all current duties, skills and functions performed;
- 2) Updates the educational requirements of the Library Assistant I position as it relates to the Library's current technical and customer needs consistent with library best practices; and
- 3) Incorporates the current duties, skills and functions performed by the Library Shelver into the Library Assistant I job description.

There will be no additional financial burden placed on the Library Budget as a result of this action as the salary range for this position will remain the same, \$22,722.34 to \$34,006.39..

**RESOLUTION No. 62-12-09**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, REVISING THE TOWN UNIFORM CLASSIFICATION SYSTEM TO AMEND THE JOB DESCRIPTION FOR THE POSITION OF LIBRARY ASSISTANT I; PROVIDING FOR THE PUBLICATION OF AN UPDATED UNIFORM CLASSIFICATION SYSTEM; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Lake Park is a duly constituted municipality organized and existing under the laws of the State of Florida and Chapter 166, Fla. Stat; and

**WHEREAS**, the Uniform Classification System is based upon similarity of duties performed and responsibilities assumed, so that the same qualifications are reasonably required for the same schedule of pay, and are equally applied to all positions in the same class; and

**WHEREAS**, it is necessary to provide an updated listing of certain current titles and classifications within the Town service,

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

**Section 1.** The foregoing recitals are hereby incorporated as if fully set forth herein.

**Section 2.** The Uniform Classification System is revised to amend the job description for the position of Library Assistant I. A copy of the amended job description for this position is attached hereto as **Exhibit A**.

**Section 3.** This Resolution shall become effective immediately upon adoption.

# LIBRARY ASSISTANT I

EXHIBIT A

**JOB CODE:** 240  
**DEPARTMENT:** LAKE PARK PUBLIC LIBRARY

## **CHARACTERISTICS OF THE CLASS:**

Under the direct supervision of the Library Director, the primary responsibility of this position is the provision of customer service in the Library's customer service area and providing basic information about Library materials. Also responsible for shelving materials and performing circulation functions at the Circulation Desk and basic clerical activities in support of all Library services. Work is performed under immediate supervision and review, and within specific limits of prescribed procedures and/or defined instructions. Performs other work as requested. This is a non-exempt position.

## **EXAMPLES OF ESSENTIAL FUNCTIONS:**

The list of essential functions, as outlined herein, is intended to be representative of the tasks performed within this classification. It is not necessarily descriptive of anyone position in the class. The omission of an essential function does not preclude management from assigning duties not listed herein if such functions are a logical assignment to the Library Assistant I position.

1. Check-in and check-out of Library materials.
2. Collects fines for overdue books and materials and maintains the cash register.
3. Assists patrons in locating materials.
4. Processes patron holds and shelves Library materials.
5. Answers phones and provide requested information to patrons and direct calls to appropriate source.
6. Sorts and route mail.
7. Registers and orients new patrons.
8. Maintains and processes serials.
9. Processes shipments.
10. Resolves problems regarding patron circulation records.
11. Shelves adult and children's books, periodicals, and other media in the proper locations.
12. Maintains correct order of books, periodicals, and other media in the library.
13. Shelves and removes newspapers and periodicals.
14. Identifies damaged books that need to be repaired or withdrawn, and routinely checking shelves
15. Follows established opening and closing routines pursuant to established Library procedures:
16. Performs other duties as assigned or directed.

## **MINIMUM REQUIREMENTS:**

### **1. Training and Experience:**

High school diploma, or equivalent, or currently enrolled in accredited high school. Previous experience working in a library or as a library volunteer is preferred. Basic computer and Internet skills required.

2. **Knowledge, Skills and Abilities:**

- Ability to follow oral and written instructions.
- Ability to operate the computer keyboard and mouse, and a wide range of office equipment.
- Ability to complete shelving assignments with accuracy.
- Ability to establish and maintain effective and positive working relationships with the patrons, associates and other Town staff
- Ability to communicate effectively with a diverse population
- Ability to read, speak, write and understand the standard English language
- Ability to manage several projects at once and adapt to changing needs and to work with frequent interruptions and maximum flexibility
- Ability to maintain confidentiality
- Ability to work a varied work schedule

3. **Physical Requirements:**

Work is performed in a library environment. Heavy lifting (50 pounds), constant standing, extensive close work and extensive PC monitor work are required. Dexterity in the use of fingers, limbs or body in the use of shop or office equipment is required.

4. **Environmental Requirements:**

Work is performed without exposure to adverse environmental conditions, e.g., dirt, cold, rain fumes, etc.

5. **Sensory Requirements:**

Work requires color and form perception and discrimination.

6. **Blood Borne Pathogens:**

Category II – Minimal to No Risk of Exposure

It is the policy of the Town of Lake Park to prohibit discrimination on the basis of race, color, religion, gender, national origin, age, political affiliation, physical or mental disability (where the disabled persons are able to perform the work they are seeking with reasonable accommodation), marital status, familial status, or sexual orientation, or any other form of unlawful discrimination, except when such condition is a bona fide occupational qualification. Such employment practices include, but are not limited to, the recruitment, hiring, compensation, assignment, training, promotion, demotion, discipline or dismissal of employees.

# Public Hearing

# TAB 8

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

Meeting Date: December 16, 2009

Agenda Item No. *Tab 8*

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

**SUBJECT:**

An Ordinance Amending Chapter 2 of the Town Code to Change the time regular Town Commission meetings begin

RECOMMENDED MOTION/ACTION: Approval

Approved by Town Manager

*Handwritten signature*

Date:

*12/1/09*

|  |   |   |
|--|---|---|
| <b>Originating Department:</b><br>Attorney   | Costs: \$ N/A<br>Funding Source:<br>Acct. #   | Attachments:  |
| Department Review:<br><input checked="" type="checkbox"/> Town Attorney <i>ITB</i><br><input type="checkbox"/> Community Affairs _____<br><input type="checkbox"/> Community Development _____ | <input type="checkbox"/> Finance _____<br><input type="checkbox"/> Fire Dept _____<br><input type="checkbox"/> Library _____<br><input type="checkbox"/> PBSO _____ | <input type="checkbox"/> Personnel _____<br><input type="checkbox"/> Public Works _____<br><input type="checkbox"/> Town Clerk _____<br><input type="checkbox"/> Town Manager _____ |
| <b>Advertised:</b><br>Date: _____<br>Paper: _____<br><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 _____<br>OR<br>Not applicable in this case _____:<br><br>Please initial one.   |

**Summary:** This Ordinance changes the Town Code to specify that the Regular Town Commission meetings are the first and third Wednesday of the month at 7 pm instead of 7:30 pm. It also amends the Code to provide that in the event a Special or Workshop meeting of the Town Commission has been noticed to begin at an earlier time on the day of a regular meeting of the Commission, the Commission may begin its regular meeting immediately following the adjournment of the Special or Workshop meeting. Staff recommends the approval of the Ordinance amending the Town Code.

**ORDINANCE NO. 17-2009**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 2, DIVISION 2, SECTION 2-51, OF THE TOWN CODE ENTITLED "MEETINGS" TO CHANGE THE TIME REGULAR MEETINGS OF THE TOWN COMMISSION BEGIN; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

**WHEREAS**, the Town Commission has adopted a municipal Code of Ordinances, which contains among other matters, provisions pertaining to officials elected to the office of Town Commission and to the meetings of those officials; and

**WHEREAS**, the Town Commission has determined it is in the best interests of the Commission and the residents, businesses and property owners of the Town to change the regular meeting time of the Town Commission from 7:30 pm to 7:00 pm on the first and third Wednesday of the month.

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

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

**Section 2.** Article II, Division 2, Section 2-51, entitled "Schedule" of the Town Code is hereby amended to read as follows:

DIVISION 2. MEETINGS\*

Sec. 2-51. Schedule.

All meetings of the town commission shall be scheduled as follows:

- (1) Regular meetings of the town commission shall be conducted on the first and third Wednesdays of each month commencing at ~~7:30~~ 7:00 p.m.
- (2) The regular and special meetings and workshops of the town commission shall be adjourned on or before 11:00 p.m. on the date when the meeting convened.
- (3) Special meetings of the town commission shall be scheduled, with at least 48 hours' public notice, upon majority vote of its members at any regular meeting.
- (4) Emergency meetings of the town commission shall be conducted on the call of the mayor, the vice-mayor in the mayor's absence, or a majority of its members upon, whenever practical, not less than 12 hours' written notice to each member, the town manager, the town clerk, the town attorney and the public. Said notice shall contain a brief description of the nature and necessity of the emergency meeting and shall be undersigned by the official calling for same. The first order of business at any emergency meeting shall be a restatement and detailed explanation of the nature and necessity of the meeting, for the record, by the presiding official. Such meetings shall be called only in response to a matter requiring commission action which, if unaddressed prior to the next regularly scheduled meeting, is likely to result in serious harm or loss to the town.
- (5) Workshop meetings of the town commission shall be scheduled upon majority vote of its members at any regular or special meeting for the purpose of planning, discussion and study. No official action shall be taken by the town commission at such meetings.
- (6) The town commission may, by resolution adopted at any regular meeting, cancel or reschedule any subsequent regular meeting.
- (7) In the event a special or workshop meeting of the Commission is scheduled on the Commission's regular meeting date, the Commission may begin its regular meeting immediately following the adjournment of the special or workshop meeting or as soon thereafter as the Commission deems appropriate provided the notice of the special or workshop meeting has stated the Commission's intention to do so.

**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.

**Non-Public  
Hearing  
Ordinance  
on First  
Reading**

# TAB 9

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

Meeting Date: December 16, 2009

Agenda Item No. *Tab 9*

- PUBLIC HEARING
- Ordinance on Second Reading
- Public Hearing

- RESOLUTION
- DISCUSSION

**ORDINANCE ON FIRST READING**

BID/RFP AWARD

GENERAL APPROVAL OF ITEM

CONSENT AGENDA

Other:

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

**RECOMMENDED MOTION/ACTION:** Approval

Approved by Town Manager *W. Davis* Date: *12/8/09*

|   |   |   |
|---|---|---|
| <b>Originating Department:</b><br>Community Development   | Costs: \$ N/A<br>Funding Source:<br>Acct. #   | Attachments:<br><b>Ordinance</b><br><b>Staff report</b>   |
| <b>Department Review:</b><br><input checked="" type="checkbox"/> Town Attorney <i>[Signature]</i><br><input type="checkbox"/> Community Affairs<br><input checked="" type="checkbox"/> Community Development <i>[Signature]</i> | <input type="checkbox"/> Finance _____<br><input type="checkbox"/> Fire Dept _____<br><input type="checkbox"/> Library _____<br><input type="checkbox"/> PBSO _____ | <input type="checkbox"/> Personnel _____<br><input type="checkbox"/> Public Works _____<br><input type="checkbox"/> Town Clerk _____<br><input type="checkbox"/> Town Manager _____ |
| <b>Advertised:</b><br>Date: _____<br>Paper: _____<br><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 _____ <i>[Signature]</i><br>Or <i>12/7/2009</i><br>Not applicable in this case _____:<br>Please initial one.   |

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

# Town of Lake Park Community Development Department



Meeting Date: December 16, 2009  
Memo Date: December 3, 2009

Patrick Sullivan, AICP, CED, Director

To: Town Commission

Re: Text amendments

## PLANNING AND ZONING BOARD REVIEW

The P&Z reviewed the proposed Zoning Code text amendments at its November 9, 2009 meeting. The board recommended approval for these amendments as written.

## DISCUSSION

1. This proposed Ordinance amendment pertains to **Town Code Chapter 78, Section 78-74, entitled "C-4 business district."** The proposed changes are to the permitted uses and special exception uses. In addition, the amendments propose adding a new section to address outdoor storage.

The land use sections in Code Section 78-74 are being reconfigured to separate "high impact" businesses from "low impact" businesses. Staff recommends that businesses that have adverse or undesirable environmental, traffic, or other negative impacts on nearby land uses, which may include businesses such as dry cleaning plants, auto painting businesses, and certain types of manufacturing facilities, should be distinguished from businesses such as offices, retail uses, and other similar businesses that have little or no adverse impacts or effects on nearby or adjoining land uses. It is therefore recommended that the high impact businesses be subject to greater scrutiny in the Town's zoning and permitting review process. The special exception process already exists as a review process for these type of uses, and is a means to ensure that various forms of mitigation, conditions of approval, and/or appropriate regulations will substantially minimize negative impacts and effects of certain businesses.

There are also additional low impact uses being added to the list of permitted uses in the C-4 district. For example, "Vehicle sales and service" is being added to the C-4 zoning district as a permitted use. This change will reflect actual uses which currently exist in the C-4 zoning district as non-conforming land uses. Prohibition of land uses should not be arbitrary and capricious, and therefore, allowing "vehicle sales and service" uses on the south side of Watertower Road, while prohibiting the same land use on the north side of the same road lacks a rational basis. This reasoning is further supported by the fact that it is likely that there are more vehicle repair shops in the C-4 zoning district (where they are currently a prohibited land use), than in the CLIC zoning district where the land use is permitted.

The final proposed amendment to Code Section 78-74 will create additional verbiage that clarifies the parameters of outdoor storage use in the C-4 zoning district. The proposed new requirements address minimum surface regulations, as well as minimum mandatory screening and landscaping provisions relative to outdoor storage.

**Based on the foregoing, Staff recommends approval of these amendments.**

**ORDINANCE NO. \_\_\_\_**

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

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

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

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

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

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

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

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

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

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

Within the C-4 business district, the following regulations shall apply:

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

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

- a. Appliance stores, including sales and service.
- b. Auctions, enclosed.
- c. Auto repair
- ~~e~~ d. Bakeries and Confectioneries
- e. Boat, sales, service and storage
- f. Building Suppliers
- ~~d~~ g. Business offices and studios.
- ~~e~~ Confectioneries.
- ~~f~~ Dance instruction. h. Studios (e.g. Dance, Art, Photography, Martial Arts)
- ~~g~~ i. Electronic equipment, sales.
- ~~h~~ j. Furniture, sales.
- k. Hardware, paint and garden supplies
- ~~i~~ l. Laboratories, medical and dental.
- j. m. Laundry plants.
- n. Mobile homes and recreational vehicles, including motorcycles, sales, service

- maintenance and storage
- o. Monuments, sales
- p. Nurseries and greenhouses
- k. q. Office/warehouse.
- l. r. Personal services, including but not limited to barbershops, beauty shops, masseurs  
and health studios.
- ~~m.~~ s. Precision instruments and optics.
- ~~n.~~ t. Printing and publishing plants.
- ~~o.~~ u. Public and private utility services.
- v. Research and Development including Bioscience uses
- w. Restaurants (including deli's and take out) that mainly service the tenants in the C-4 and CLIC districts. Drive through prohibited.
- x. Self- Storage Facilities
- ~~p.~~~~y.~~ Taxidermists.
- ~~q.~~ z. Upholstery shops.
- ~~r.~~ aa. Buildings, structures and uses accessory and customary incidental to any of the  
above uses.

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

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

~~e. Planned unit developments.~~

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

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

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

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

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

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

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

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

d. *Maximum lot coverage.* Main and accessory buildings, loading facilities and

uses shall not cover more than 50 percent of the lot area.

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

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

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

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

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

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

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

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

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

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

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

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

# TAB 10

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

Meeting Date: December 16, 2009

Agenda Item No. Tab 10

- PUBLIC HEARING
- Ordinance on Second Reading
- Public Hearing

- RESOLUTION
- DISCUSSION

**ORDINANCE ON FIRST READING**

BID/RFP AWARD

GENERAL APPROVAL OF ITEM

CONSENT AGENDA

Other:

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

**RECOMMENDED MOTION/ACTION:** Approval

Approved by Town Manager *W. Lewis*

Date: 12/9/09

|   |   |   |
|---|---|---|
| <b>Originating Department:</b><br>Community Development   | Costs: \$ N/A<br>Funding Source:<br>Acct. #   | Attachments:<br><b>Ordinance</b><br><b>Staff Report</b>   |
| Department Review:<br><input checked="" type="checkbox"/> Town Attorney <u><i>AS</i></u><br><input type="checkbox"/> Community Affairs <u><i>AM</i></u><br><input checked="" type="checkbox"/> Community Development <u><i>AM</i></u> | <input type="checkbox"/> Finance _____<br><input type="checkbox"/> Fire Dept _____<br><input type="checkbox"/> Library _____<br><input type="checkbox"/> PBSO _____ | <input type="checkbox"/> Personnel _____<br><input type="checkbox"/> Public Works _____<br><input type="checkbox"/> Town Clerk _____<br><input type="checkbox"/> Town Manager _____ |
| <b>Advertised:</b><br>Date: _____<br>Paper: _____<br><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><i>AM</i></u><br>Or 12/7/2009<br>Not applicable in this case _____:<br>Please initial one.  |

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

# Town of Lake Park Community Development Department



Meeting Date: December 16, 2008  
Memo Date: December 3, 2009

Patrick Sullivan, AICP, CED, Director

To: Town Commission

Re: Text Amendment to PADD

## PLANNING AND ZONING BOARD REVIEW

The P&Z reviewed the two proposed Zoning Code text amendments at its November 9, 2009 meeting. The board recommended approval for this amendment as written.

### DISCUSSION

This proposed Ordinance amendment pertains to PADD sign regulations as set forth in **Town Code Chapter 78, Section 78-70, subsections (i), (n), (p), and table 78-70-7**. In a continuing effort by the Town to be flexible in addressing unique signage situations that occasionally arise within the PADD, Town Staff has recommended extensive revisions to the PADD Sign Code.

The majority of the storefronts within the PADD are different, and as a result require special conditions when being reviewed for sign permits.

- The first major change to this Code Section and multiple subsection contained therein, provides for administrative waivers by the Town's Community Development Director under limited circumstances in accordance with established criteria and guidelines, as specified in greater detail in the proposed text amendments.
- Another amendment provides flexibility in covering ground floor windows. In limited situations, staff concurs that a waiver be granted from the current requirement that storefront windows remain un-obscured. For example, the Palm Beach Ballet Center located at 702 Park Avenue is one instance where the windows of a ground floor storefront should be covered for public safety and privacy reasons.
- The proposed Ordinance also contains numerous amendments to the prohibited and permitted signs subsection. The vast majority of these amendments are necessary to update the Code, eliminate inconsistent provisions which conflict with other Code Sections, eliminate clerical errors, and to make common sense revisions to outdated provisions such as removing temporary signs from the prohibited sign list. More significant of the changes address permitting A-Frame or sandwich signs which have been professionally produced.
- Because the proposed amendments provide for additional flexibility, significant corresponding design requirements and guidelines have also been incorporated into this Code Section, and it's subsections to achieve a fair and appropriate balance.
- Also, a area of subsection 78-70 (p) 8 pertaining to non-conforming signage has been eliminated, since this subsection is long past its relevancy period. The

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subsection, which is being deleted/repealed previously provided that non-conforming signs had to come into compliance by August 6, 2002, and are no longer grandfathered signage in the PADD. As a result of this amendment, all signage within the PADD must comply with the requirements of the PADD sign regulations unless extraordinary relief in the form of a sign waiver is granted in accordance with the sign waiver process.

- A new sign waiver section has been added which provides guidelines for reviewing and granting a sign waiver in the event the applicant can demonstrate that a majority of the waiver criteria have been met. Conditions of approval may be imposed on any sign waiver that is granted and other penalties for non-compliance are provided by the amendments.
- In order to correspond with the zoning text amendments, the matrix table has also been updated.

**Based on the foregoing Staff recommends approval of these Zoning Code text amendments.**

ORDINANCE NO. \_\_\_\_\_-2009

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

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

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

**WHEREAS**, Town staff has recommended to the Town's Planning and Zoning Board, and the Town Commission, that Chapter 78, Article III, Section 78-70(n) of the

Town Code, be amended to provide for the limited use of window graphics to allow certain types of personal service businesses, such as restaurants, dance studios, beauty parlors, theaters, and other similar personal services type business uses, to partially obscure a portion or all the windows on the premises of the particular business, in order to allow additional privacy for the clientele and patrons of these type of PADD businesses; and

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

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

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

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

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

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

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

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

**Section 2.** Chapter 78, Article III, Sections 78-70(l), 78-70(n), 78-70(p), and

Table 78-70-7 of the Town Code are hereby amended to read as follows:

**Sec. 78-70. Park Avenue Downtown District.**

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

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

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

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

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

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

- ~~a.~~ A frame, sidewalk, or sandwich signs;
- ~~b.~~ Alley signs, excluding signage of not more than one square foot in area for business identification/delivery purposes;
- ~~a e.~~ Balloon signs;
- ~~b d.~~ Banners;
- ~~c e.~~ Bench signs;
- ~~d f.~~ Billboards;
- ~~e g.~~ Cabinet signs;
- ~~f h.~~ Changeable copy signs, excluding signs for activities whose principal use involves changes in performances, such as live theaters, movie theaters, comedy clubs, etc;
- ~~g i.~~ Electronic message signs;
- ~~h j.~~ Flags, except the excluding-American, state, and the town of Lake Park flags, and the official flags of other nations; as approved by the town manager;
- ~~ik.~~ Freestanding signs, including monument signs, pole signs, and pylon signs;
- ~~l.~~ General product signs;
- ~~j m.~~ Inflatable signs;
- ~~k n.~~ Marquee signs, unless otherwise provided herein;
- ~~o.~~ Neon used to outline windows, buildings, doors, etc;
- ~~p.~~ Off-premises signs;
- ~~l q.~~ Painted wall signs, with the exception of murals that are commissioned by the town depicting historic scenes of Lake Park;
- ~~m f.~~ Paper signs attached directly to a window or other surface, including "open," "closed," or similar signs;
- ~~s.~~ Parapet-mounted signs;
- ~~n t.~~ Pennants and streamers;
- ~~u.~~ Plastic lettering attached directly to a surface;
- ~~o v.~~ Roof-mounted signs; including on mansard style roofing;
- ~~p w.~~ Signs, which involve moving or rotating parts, intermittent lights, animation; and temperature display, or similar movements;
- ~~q x.~~ Signs, which emit smoke, sounds, odors, or any other visible matter;
- ~~r y.~~ Snipe signs;
- ~~z.~~ Stab signs;
- ~~s aa.~~ String lights, unless otherwise provided herein; and
- ~~bb.~~ Temporary signs; and
- ~~t ee.~~ Vending machines with product names, logos, lettering, etc., visible from a public right-of-way.

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

- a. Awning signs;

- b. Light pole signs are only allowed if they are town-owned and contain town-approved signage;
- c. Menu signs must be wall mounted or consist of an A-frame mounted signs and must be located near the entrance to the restaurant in order to be approved. Menus and/or other information such as restaurant or other reviews, photographs, autographs, memorabilia and other forms of displays shall not be affixed directly to a window or exterior door;
- d. Neon signs utilizing a business name or logo;
- e. Political signs;
- f. Projecting signs;
- g. Special events signs;
- h. Wall signs; ~~and~~
- i. Window signs.
- j. Temporary real estate signs that advertise a property or space for sale or lease; provided, however, that any such temporary "for sale" or "for lease" sign(s) may not be larger than six ~~four~~ (4) square feet. The following additional requirements shall also apply to all such signs:
  1. Only one sign per property is allowed;
  2. The sign may only be located on the premises and/or property that is being advertised for sale or for lease in the sign;
  3. The sign must be clearly temporary in nature, and may only be erected or placed on an exterior building wall, or inside a window of the premises; and
  4. The sign must be professionally created or manufactured or produced (as opposed to handmade), and be generally aesthetically pleasing in keeping with the basic goals and intent of the PADD regulations;
- k. Vinyl window artwork or graphic signage, which has been reviewed and approved by the town's community development director. Vinyl artwork is exempt from the percentage of window area calculations and other attendant regulations, provided that the artwork contains a very limited amount of lettering which advertises the business and/or the products or services provided by the business, store hours, and/or other information;
- l. A-frame, sidewalk or sandwich signs provided that the board on which the sign is to be affixed, and the sign lettering are both professionally produced by a business tax receipted professional signage business or company; and
- m. Murals or painted wall signs may be allowed, after approval by the town's community development director.

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

- a. Signs must be Be consistent and harmonious with the colors, materials, and architectural style of the premises on which the sign is to be located and surrounding properties; building to which they are attached;
- b. Be of a scale that is consistent with the building to which they are attached; The size and style of the graphics, the scale, proportion, design, material and texture of the sign, as well as the size and style of the lettering, shall advertise only businesses which are or will be located in the premises on which the sign is to be placed. The content of the signage must directly relate to the building or structure (or businesses located therein) that the sign is to be attached to. Signs shall be consistent and harmonious with the architectural style of the subject premises on which the sign is to be affixed, as well as the surrounding properties and the design regulations for the PADD.
- c. Signs shall not contain excessive illumination or ornamentation. When determining whether a sign or signs contain excessive illumination, the community development director shall consider factors, including but not limited to the following circumstances and conditions when making his/her determination: the size of the business; the location of the business; the amount of light spillage on surrounding areas; the proximity of the proposed signage to residential areas; the type/use of the business; whether the signage will be distracting, disturbing, or aesthetically unpleasing; the consistency with the signage of the proposed signage with that of signage on nearby and surrounding properties; the consistency of the proposed signage with the comprehensive plan; and any other relevant considerations.
- d. If the architecture of the building or structure allows for specific locations for signs, all signage shall be limited only to those areas.
- e. Signs shall be an integral part of the design of storefront alterations and new construction. Signs shall not obscure materials or prominent architectural elements of buildings or structures.
- f. The design and alignment of signs located on multiple-use buildings shall be coordinated so as to achieve a unified appearance.
- g. Unless otherwise conditioned as part of the sign approval, all signs shall be constructed of good quality, permanent materials and shall be permanently attached to the structure or building.
- h. Window signs which are permanently affixed to the external or internal side of windows, shall consist of a medium grade or premium grade vinyl, digital image using solvent coloring, or other similar type material, shall be consistently maintained in a good and aesthetically pleasing condition, and shall be removed or replaced on an as needed basis due to use, age, and wear and tear.
- i. All signs shall comply with all applicable provisions of the current edition of the Florida Building Code and any Town amendments thereto, and the current edition of the National Electrical Code ("NEC"), as published by the National Fire Protection Association ("NFPA"), including specifically, NFPA 70 pertaining to the standards for the safe installation of electrical wiring

and equipment, as well as NFPA 101 a/k/a the "National Life Safety Code", and all other applicable codes and regulations, even if not expressly enumerated herein.

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

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

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

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

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

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

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

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

~~section 78-70(p) are expressly required by section 78-70(p)(8)(a) and (b). A sign illegally constructed or installed prior to the effective date of this section shall continue to be considered an illegal sign.~~

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

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

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

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

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

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

- ~~1. The name and address of the property owner;~~
- ~~2. A survey or other similar document indicating the specific location and size of the affected sign;~~
- ~~3. A copy of the building permit for the affected sign;~~
- ~~4. A certified estimate of installation costs;~~
- ~~5. A certified estimate of replacement costs;~~
- ~~6. How the request for time extension or waiver complies with the waiver criteria contained in subsection (l)(7) of this section;~~
- ~~7. Other information in support of the request; and~~
- ~~8. The additional amount of time requested prior to or waiver from removal of the sign.~~

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

(10) Administrative sign waivers procedure.

(a) Sign waivers. Waivers from the strict interpretation of section 78-70(p) may be granted by the community development director for good cause only, and provided that a majority of the required waiver criteria as set forth herein have been met. The burden of proving that a majority of the waiver criteria have been met is on the applicant. It is the intent of the community

development director to review sign waiver requests, based upon the anticipated impact of the proposed waiver on other properties within the PADD, the town at-large, as well as the requirements of the applicant, and to balance the needs of each. For purposes of this section, an applicant for a sign waiver shall demonstrate "good cause" by complying with a majority of the following waiver criteria:

Sign waiver criteria:

- (1) special and unique conditions exist which are peculiar to the applicant's case and which are not generally applicable to the property located within the PADD, such as natural or manmade sight limitations from public rights-of-way;
- (2) the special and unique conditions are not attributable to or result from the actions of the applicant;
- (3) the granting of the waiver would not confer any special privilege or benefit on the applicant that is denied by the provisions of this section to other lands, buildings, businesses, or structures within the PADD;
- (4) the literal interpretation of section 78-70(p), as applied to the applicant, would deprive the applicant of rights commonly enjoyed by persons who are similarly situated;
- (5) the waiver granted is the minimum waiver necessary for the applicant to make reasonable use of the property;
- (6) granting the waiver is not detrimental to the public welfare, or injurious to property or improvements in the PADD, or the town in general;
- (7) The application is consistent with the intent of section 78-70;
- (8) The application furthers the town's goal to establish a neighborhood and community-serving urban center;
- (9) The application furthers the architectural and site design elements of section 78-70; and
- (10) The application demonstrates the request for waiver will be in harmony with the general intent and purpose of section 78-70, and that such waiver or waivers will not be injurious to the area involved or otherwise detrimental to the public health, safety, and welfare.

(b) *Application for sign waivers.* The application for a sign waiver shall be on a form provided by the town clerk and accompanied by a filing fee as specified by resolution of the town commission. Each application for a waiver under this section shall be in writing and shall justify and detail the reasons for the request for a waiver using the waiver criteria contained herein. The applicant must present substantial competent evidence to justify the waiver, together with the completed application form. Any written justification statements, which are submitted as evidence in support of the waiver request by a purported expert, and/or any other individual, must be sworn to under oath, signed and notarized. The application shall also be signed by the applicant or the applicant's authorized agent, and the sign company who shall

be responsible for creating and installing the sign for which the sign waiver is being sought. Applicants represented by agents must submit written evidence of the delegation of agent authority or a power of attorney.

(c) Sign waiver application review. An application for a waiver under this section shall be deemed abandoned thirty (30) days after the date the community development department ("department") notifies the applicant of any deficiencies contained in the application. The department may, upon written request and justification by the applicant, grant not more than one 30-day extension. At the expiration of the 30-day period, or any extension thereof, the application shall automatically expire and become null and void. Permit fees and charges paid at the time of application, and plan review fees, shall be refunded, except that an administrative fee shall be retained. Each application for a waiver of the provisions of this section shall first be reviewed by the community development director for technical sufficiency and compliance with this section. The community development, after considering all of the substantial and competent evidence provided by the applicant or the applicant's agent in conjunction with all of the waiver criteria as set forth herein, shall render a written final administrative order containing findings of fact and conclusion of law, either granting the waiver, granting the waiver with conditions of approval, or denying the waiver. Any applicant aggrieved by a decision of the community development director may appeal the final decision as provided in town code section 78-186 to the Planning and Zoning Board.

(d) Abandonment or expiration of sign waiver. A waiver granted by the community development director shall automatically expire either (a) 18 months from the date of the rendition of the written resolution of the community development director granting the waiver, if a building permit has not been issued in accordance with the plans and conditions upon which the waiver was granted, or (b) if the building permit issued in accordance with the plans and conditions upon which the waiver was granted expires and is not renewed pursuant to the applicable provisions regarding renewal of building permits. The final decision of the community development director on the waiver application shall be set forth in a written administrative final development order.

TABLE 78-70-7  
PERMITTED SIGNS

TABLE INSET:

| Sign Type   | Maximum Size  | Maximum Number                 | Copy Limit  | Other Limits   |
|-------------|---|--------------------------------|---|--|
| Awning Sign | <del>3 square feet</del> <u>In proportion to the size of the awning</u> | <del>1 per front OR side</del> | Business name, address, phone number, and logo, and words depicting the | *Letters, numbers, and logo shall not exceed 6 inches in height. |

|                      |  |                          |   |   |
|----------------------|--|--------------------------|---|---|
|                      |  |                          | nature of business (letters shall be not more than 50% of the height of the letters depicting the business name)  |   |
|                      | --   | --                       | --  | *Located only on a valance  |
| Changeable Copy Sign | Not more than 50% of any portion of a building fronting on or facing Park Ave. | 1 per front of building  | Business name, and words describing the nature of the business (letters shall be not more than 50% of the height of the letters depicting the name of the business.) The name, time, and date of current and upcoming events may also be displayed. | *May substitute as a wall sign, but shall not be used in addition to a permitted wall sign. |
|                      | --   | --                       | --  | *Marquee sign may be used   |
|                      | --   | --                       | --  | *Marquee sign may extend over walkways, a minimum 8-foot clearance is required.             |
|                      | --   | --                       | --  | *Marquee shall not extend beyond top of roof  |
|                      | --   | --                       | --  | *Marquee sign shall be proportionate to size of building                                    |
| Flags                | Display of flags of the United States shall be in accordance with              | 1 flag pole per business | US, Florida, <u>official flags of other nations</u> , and <u>the flag of the</u>  | *Freestanding flagpoles shall not exceed 50 feet in height, except for otherwise permitted  |

|   |   |                       |  |   |
|---|---|-----------------------|--|---|
|   | current U.S. Code of Federal Regulations (C.F.R.) to the extent reasonably possible, and flag size shall be Proportionate to the size and height of the flag pole |                       | Town of Lake Park. flags                               | stealth telecommunications facilities in a flagpole design.                 |
|   | --  | --                    | --   | *Building-mounted flag poles shall not extend into any public right-of-way. |
| <u>Public Light Pole Sign</u>               | Per Town Commission   | <del>1 per pole</del> | Per Town Commission                                    | *Must be approved by Town Commission <u>or</u> <u>designee.</u>             |
| Menu Sign (Restaurants only)                | 3 square feet   | 1 per restaurant      | Restaurant menus                                       | *Within 2 feet of front door  |
|   | --  | --                    | --   | *Mounted on exterior wall or in a window                                    |
|   | --  | --                    | --   | *May be enclosed <u>in a cabinet</u>  |
| Neon Sign, <u>LED or similar technology</u> | a maximum size of six (6) square feet <del>in a</del> <u>window.</u>  | 1 per business        | Business logo, name, open sign or depiction of product | *Mounted flush with wall or in window                                       |
|   | --  | --                    | --   | *First floor location only  |
|   | --  | --                    | --   | *One face only  |
|   | --  | --                    | --   | *Shall not project by more than 8 inches                                    |
|   | --  | --                    | --   | *Shall not be located on arcade or similar facade                           |
|   | --  | --                    | --   | *May be located above   |

|                      |  |  |  |  |
|----------------------|--|--|--|--|
|                      |  |  |  | or below canopy or arcade  |
|                      | --   | --   | --   | *May be used as a substitute for or part of a wall or window sign  |
| Projecting Sign      | 3 <u>6</u> square feet   | 1 per business   | Business name, phone number, and logo, and words describing the nature of the business (letters shall be not more than 50% of the height of the letters depicting the name of the business.) | *Letters, numbers, and logo shall not exceed 6 inches in height.   |
|                      | --   | --   | --   | *Minimum clearance of 8 feet above sidewalk or public walkway  |
| Political Signs      | None   | None   | None   | *Allowed pursuant to chapter 70.   |
| Special Events Signs | Banners shall not exceed 20 square feet<br>Sandwich signs shall not exceed 6 sq feet | One wall mount or one banner per 500 ft frontage and one sandwich sign | Only on the property   | *Signs, pennants, flags, streamers, banners, etc., as approved by the community development director-for special events and for a limited duration as specified in the permit. |
|                      | --   | --   | --   | *Number, size, and location of signs to be approved by the community development director  |
|                      | --   | --   | --   | *Display of signs shall not exceed 14 calendar days  |
|                      | --   | --   | --   | *Not more than 4 special events may occur on the same site or at the same use for each   |

|               |      |      |      |   |
|---------------|------|------|------|---|
|               |      |      |      | calendar year   |
| String Lights | None | None | None | *String lights may not spell out or resemble the logo of any commercial product or use.   |
|               | --   | --   | --   | *Installation at places of business and on commercial or industrial properties, must be approved by the community development director.   |
|               | --   | --   | --   | *Installation in landscaping can be permanent   |
|               | --   | --   | --   | *Installation as a seasonal decoration may be displayed for a period not more than 45 calendar days   |
|               | --   | --   | --   | *Installation as a seasonal decoration may occur not more than 6 times per year   |
|               | --   | --   | --   | *Installation as a seasonal decoration, may be used for any one or more of the following holidays: beginning of the Christmas holiday season through and including New Year's Day or only New Year's, Thanksgiving, Halloween, Easter, and Kwanza, and Hanukkah |
|               | --   | --   | --   | *Additional holidays may be recognized by the Community Development Director,   |

|  |   |   |  |  |
|--|---|---|--|--|
|  |   |   |  | upon the showing of good cause by the applicant.   |
| Temporary real estate and for sale signs | <del>6 square feet</del><br>9 square feet<br>( <u>permit fee required</u> )<br><br>4 square feet<br>( <u>exempt from permit fee</u> ) | 1 per property that is for sale or rent | Name, address, and phone number of agent; copy indicating that the subject property is "for sale" or "for lease", and other information deemed necessary and appropriate at the time of sign permitting. | *Professionally produced or created  |
|  | --  | --                                      | --   | *Located on an exterior wall or in a window only, freestanding signage is strictly prohibited  |
|  | --  | --                                      | --   | *A temporary sign permit is valid for 6 months from the date of permit issuance. A new permit must be applied for after the initial 6 month period expires. After the issuance of two temporary sign permits for the same property, the community development director, has the discretion to deny a request for an additional temporary sign permit on the grounds that the sign is not a temporary sign. |
| Wall Sign                                | 50% of building frontage facing   | 1 per business                          | Business name, logo, address,  | <del>*Mounted flush with wall</del>  |

|             |   |              |   |  |
|-------------|---|--------------|---|--|
|             | Park Ave., 30% of building frontage for side streets                                |              | phone number, and words describing the nature of the business (letters shall be not more than 50% of the height of the letters depicting the name of the business.) |  |
|             | --  | --           | --  | *First floor location only   |
|             | --  | --           | --  | *One face only   |
|             | --  | --           | --  | *Shall not project by more than 8 inches   |
|             | --  | --           | --  | *Shall not be located on arcade or similar facade  |
|             | --  | --           | --  | *May be located above or below canopy or arcade  |
|             | --  | --           | --  | *May be painted directly on wall if <u>approved by the community development director.</u> <del>only if the rendering is commissioned by the Town Commission, and the painted area accurately depicts a scene of historic Lake Park.</del> |
| Window Sign | No more than 25% of any single window panel or pane. <u>Vinyl window art panels</u> | 1 per window | Business name, address, logo, and telephone number, and words describing the nature of  | *Must be painted or applied directly onto the window surface, or hung within 6 inches of the window. Placement and design must be  |

|  |   |    |           |   |
|--|---|----|-----------|---|
|  | <u>without lettering, are exempt from the size percentage</u> |    | business. | consistent, harmonious, and unified throughout all windows in the building.   |
|  | --  | -- | --        | *Neon sign(s) may be used for all or part of permitted signage.   |
|  | --  | -- | --        | *Shall be located only on the first floor.  |
|  | --  | -- | --        | *Stand alone lettering is strongly discouraged. Lettering that incorporates graphic elements, borders, and backgrounds is preferred.  |
|  |   |    |           | *Plastic, vinyl, or other similar lettering of any form that is applied directly to a window is deemed to be a sign for purposes of this Section, and requires a sign permit approved by the Community Development Department prior to placement on a window. |

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

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

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

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

**Discussion  
&  
General  
Approval  
of  
Item**

# TAB 11

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

Meeting Date: December 16, 2009

Agenda Item No. *Tab 11*

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

SUBJECT: Development of the Adopt a Soldier Program

RECOMMENDED MOTION/ACTION:

Approved by Town Manager *W. Davis* Date: *12/10/09*  
*Benjamin McElroy*  
 Name/Title *HR Director* Date of Actual Submittal *12/10/09*

|   |  |   |
|---|--|---|
| <b>Originating Department:</b><br>Vice Mayor Jeff Carey   | Costs: \$ -0-<br>Funding Source:<br>Acct. #  | <b>Attachments:</b>   |
| <b>Department Review:</b><br><input type="checkbox"/> Community Affairs _____<br><input type="checkbox"/> Community Development _____<br><input type="checkbox"/> Finance _____ | <input type="checkbox"/> Fire Dept _____<br><input type="checkbox"/> Human Resources _____<br><input type="checkbox"/> Library _____<br><input type="checkbox"/> Marina _____<br><input type="checkbox"/> PBSO _____ | <input type="checkbox"/> Public Works _____<br><input type="checkbox"/> Town Attorney _____<br><input type="checkbox"/> Town Clerk _____<br><input type="checkbox"/> Town Manager _____ |
| <b>Advertised:</b><br>Date: _____<br>Paper: _____<br><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 _____<br>OR<br>Not applicable in this case <u>BMT</u> _____:<br><br>Please initial one.  |

### Summary Explanation/Background:

At its August 19, 2009 meeting, Vice Mayor Jeff Carey recommended that the Town of Lake Park sponsor or adopt a soldier or a platoon serving in the military. Staff has identified PVT Robert Williams currently serving abroad with the U.S. Army 1218 Transportation Company, and recommends that PVT Williams and his platoon be adopted by the Town. PVT Robert Williams is from the West Palm Beach, Florida area.

The following are suggested options for consideration in establishing and maintaining an ongoing supportive connection between PVT Williams and his platoon:

### Donation Drive

A donation box to be placed in the lobby of Town Hall, in the Library and in the Ship's Store at the Marina where residents and visitors can place donated items, such as:

- canned fruit
- canned sardines
- tuna in pouches
- condiments (such as Cajun seasoning, catsup, hot sauce, etc.)
- instant coffee packets and tea bags
- popcorn
- various mini dinners
- Gatorade
- fruit pies
- gum
- pudding cups
- baby wipes
- lip baum
- eye drops
- playing cards
- board games
- batteries (AA, C, D or 9 volt)
- movie DVD's and music CD's

A suggested list of snack food and miscellaneous items is attached which also contains a listing of items that cannot be sent.

Every two or three months, donated items will be collected and boxed by staff and shipped.

### Card and Letter Writing Drive

A letter drop box to be placed in the lobby of Town Hall, in the Library and in the Ship's Store at the Marina where residents can deposit letters and cards to be included in each donation shipment. Local school children to be encouraged to participate by writing and decorating cards to be included in each shipment.

Every two or three months, donated items, cards and letters will be boxed by staff and shipped.

### Monetary Donation Drive

A monetary donation drive to be conducted to encourage monetary donations to the Town to help defray the cost of shipping.

Attachment

## Suggested Snack Food & Miscellaneous Items

All food items must be appropriately sealed / and prepackaged

April 2007

**WHAT CANNOT BE SENT:** Pork products, Alcohol, Pornographic materials, liquid hand sanitizer, or Aerosol cans. Due to the extreme heat, chocolate is not mailed during the summer months. Visit the USPS at <http://www.usps.com> to learn more about APO/FPO mailings and view sizes of postal boxes available. Call 1-800-222-1811 to order free shipping supplies. Visit the Military Postal Service Agency to learn even more <http://hqdainet.army.mil/mpsa/mid.htm>.

### Canned Items

canned fruit  
chicken and/or packs; pop-top  
peanut butter / Jelly  
sardines  
tuna and/or packs (tuna in pouches are best)

### Condiments

cajun seasoning  
catsup  
garlic salt  
honey packs  
hot sauce  
Lawry's  
mayo,  
mustard  
relish  
salad dressings  
salsa (don't forget the taco chips)  
salt/pepper, sugar packets  
spices  
Sweet N Low

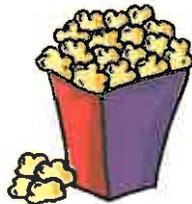


### Ground Coffee / Tea / Hot Chocolate

(if they have a coffee-maker),  
cappuccino  
coffee creamer  
hot chocolate mixes  
instant coffee  
tea bags

### Microwavable Foods

(if they have a microwave)  
Mac & Cheese  
popcorn  
brownie mix  
various mini dinners  
instant oatmeal  
instant soups / soups in pop-top containers



### Powdered Drink Mix Singles

Crystal Light  
Gatorade  
juice boxes  
Kool-Aid  
Propel, etc.

### Snacking Foods

beef Jerky / beef sticks, summer sausage  
cheese spreads / small Velveeta cheese blocks  
Dry Cereal  
Chex Mix  
chips  
cookies  
crackers for snacking  
Doritos  
dried fruit  
energy bars / Cereal Bars / high protein bars /  
Granola Bars  
fruit pies  
gum, Hard Candy wrapped (no chocolate in  
summer)  
Little Debbie's & other snack cakes  
nuts (all kinds)  
pudding cups

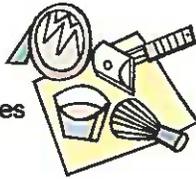


### Toiletries

Advil, Tylenol, Cold/Cough drops, Sinus Meds  
Antacids  
Antibiotic Cream (Neosporin)  
Anti-Bacterial Wipes  
Baby Oil, Baby Powder  
Baby Wipes  
Bath mat  
Bath/hand/wash towels (dark colors)  
Blankets for cooler weather  
Body Wash / soap (be sure to triple pack the  
soap and not put it near the food as it leaves the  
smell of soap on the food)  
Chapstick  
Clothes Pins/Line  
Contact Lens Cleaner  
Cotton Balls  
Dental Floss  
Deodorant  
Disposable hand and feet warmers  
DUSTING CLOTHS for removing the sand from  
everything and every surface  
Eye Drops  
Eyeglass Kit  
Face Soap  
Foot Inserts for boots  
Foot/Boot Powder  
Insect Repellent Wipes/ non aerosol spray  
with Deet (need in spring/summer)  
Imodium  
Laundry Soap / Fabric Softener  
Air Freshener



Lotion for body and hand  
 Mattress toppers  
 Mirror  
 Mouthwash  
 Nasal Spray/Drops  
 Packaged Wet Ones / baby wipes  
 Pepto Bismol  
 Pillow with pillowcase  
 Pocket Size First-Aid Kit  
 Puma Stones for feet  
 Q-Tips  
 Shampoo  
 Sunglasses  
 Sunscreen  
 Toenail/Fingernail Clippers  
 Toilet Paper  
 Tooth Paste / Tooth Brush  
 Tooth Picks  
 Twin Fitted dark sheets  
 Vitamins



**Men:** Razors, Shaving Cream in a tube, after-shave lotion (no fragrance)

**Women:** Panty Liners, feminine hygiene products, conditioner, brush/comb hair clips/bands, non-aerosol hair spray, hair gel

**Suggested Clothing**

Hats, bandannas  
 Socks – white for PT; black for everyday wear with uniform  
**Men's** T-shirts and underwear (all sizes)  
 BROWN or GREEN for the T-SHIRT if possible.  
 Proper issued military t-shirts can also be acquired at Army Surplus stores.  
**Women's** sport bras and panties (all sizes)

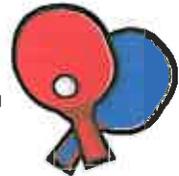


**What cannot be sent:** Pork products, alcohol, pornographic materials, liquid hand sanitizer, or aerosol cans (they may explode). Do not send products in glass containers (unless they are bubble-wrapped a few times. Package all food items that may leak in zip-lock bags. Put all liquid items in a zip-lock bag. Due to the extreme heat, chocolate is not mailed during the summer months.

Visit the USPS at <http://www.usps.com> to learn more about APO/FPO mailings and view sizes of postal boxes available. Call 1-800-222-1811 to order free shipping supplies. Visit the Military Postal Service Agency to learn even more <http://hqdainet.army.mil/mpsa/mid.htm>.

**Suggested Fun Time Materials**

Balls: soccer ball, baseballs, basketballs, volley ball sets, football  
 Batteries: AA- C -D -9 volt  
 Beanie Babies or stuffed animals (new please)  
 Board Games  
 Playing Cards  
 CD Player with CDs / send batteries  
 Dart Board with darts  
 Disposable cameras  
 DVDs (you can tape from television too)  
 Electronic/Battery Hand held games (include batteries)  
 Mailing Envelopes (no stamps) / Pens with Stationary  
 Frisbee  
 Greeting Cards they can send back home (variety)  
 Mag flashlight bulbs,  
 Magazines (all kinds)  
 Mini Hand-held Fan or Water Misty fan  
 Nerf Balls  
 Packaged Poker Sets  
 Plastic bowls, spoons, forks, knives  
 PlayStation with games  
 Puzzle Books/Word Find Books  
 Sewing Kits  
 Small flash light for reading at night  
 Water guns  
 X-Box with games  
 Yo-Yo's  
 Zip Lock Bags & Plastic lock containers for sealing leftovers and personal items



# TAB 12

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

Meeting Date: December 16, 2009

Agenda Item No. *Tab 12*

- PUBLIC HEARING
- Ordinance on Second Reading
- Public Hearing

- RESOLUTION
- DISCUSSION

ORDINANCE ON FIRST READING

BID/RFP AWARD

GENERAL APPROVAL OF ITEM

CONSENT AGENDA

Other:

**SUBJECT:** Pain Management Clinics

**RECOMMENDED MOTION/ACTION:** Declare zoning in progress

**Approved by Town Manager** *W. J. Davis*

**Date:** *12/9/09*

|  |   |   |
|--|---|---|
| <b>Originating Department:</b><br>Community Development  | Costs: \$ N/A<br>Funding Source:<br>Acct. #   | Attachments:  |
| <b>Department Review:</b><br><input checked="" type="checkbox"/> Town Attorney <i>[Signature]</i><br><input type="checkbox"/> Community Affairs <i>[Signature]</i><br><input checked="" type="checkbox"/> Community Development <i>[Signature]</i> | <input type="checkbox"/> Finance _____<br><input type="checkbox"/> Fire Dept _____<br><input type="checkbox"/> Library _____<br><input type="checkbox"/> PBSO _____ | <input type="checkbox"/> Personnel _____<br><input type="checkbox"/> Public Works _____<br><input type="checkbox"/> Town Clerk _____<br><input type="checkbox"/> Town Manager _____ |
| <b>Advertised:</b><br>Date: _____<br>Paper: _____<br><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 _____ <i>[Signature]</i><br>Or <span style="float: right;">12/8/2009</span><br>Not applicable in this case _____:<br>Please Initial one.               |

**Summary Explanation/Background:** The county has recently initiated a moratorium on zoning in progress to give them an opportunity to prevent more pain management clinics from locating in the county until such time as the county has a proper ordinance in place to regulate these clinics. The county will not accept applications for Business Tax Receipts for Pain Management Clinics while this zoning is pending. This action by the county may push these clinics to open in areas that are not regulated or prohibited such as Lake Park. In order to forestall any rush to get a permit it would be prudent for the Town to have the Commission direct staff to research and prepare an ordinance that provides for reasonable regulations and safeguards for the locating and operation of these clinics. The commission should also request that staff stop issuing Business Tax Receipts for Pain Management Clinics until such time as appropriate legislation can be adopted.