



**SEALED BIDS FOR
INVITATION TO BID NO. 7-2-2021**

PURCHASE AND INSTALLATION OF SOLAR LIGHTING

**TOWN OF SOUTH PALM BEACH
3577 SOUTH OCEAN BLVD.
SOUTH PALM BEACH, FL 33480**

LEGAL NOTICE

The Town of South Palm Beach (the “Town”) is soliciting bids from qualified contractors to purchase and install solar lights along designated Town pathways in accordance with the Town of South Palm beach Pathway Lighting project plans. Work shall include all mobilization and necessary survey, labor, equipment, and materials. Interested contractors may pick up or request a copy of the ITB from the Town Manager at 3577 S. Ocean Blvd., South Palm Beach, FL 33480 or by telephone at 561-588-8889 or by email at rkellogg@southpalmbeach.com.

A non-mandatory pre-bid meeting will be held at Town Hall, 3577 S. Ocean Blvd., South Palm Beach, Florida, on the 15th day of July, 2021 at 10:00 a.m. All potential bidders are encouraged to attend.

ITB packages shall be submitted to the Town on or before 10:00 a.m. on August 2, 2021. Sealed envelopes should be marked as follows: **BID ON TOWN OF SOUTH PALM BEACH ITB FOR THE PURCHASE AND INSTALLATION OF SOLAR LIGHTING.** No responses will be accepted after that time.

Selection will be in accordance with the ITB, the Town’s Purchasing policies, and all applicable federal, state, and local requirements. The Town will award the bid to the lowest responsive and responsible contractor whose bid meets the requirements and criteria set forth in the ITB. The Town reserves the right in its sole discretion to withdraw this ITB, to reject any or all bids and/or to waive all nonmaterial irregularities on any and all bids. All questions and requests for additional information in connection with this ITB and selection shall be directed in writing or email only to Robert Kellogg, Town Manager, 3577 S. Ocean Blvd., South Palm Beach, FL 33480 or by email at rkellogg@southpalmbeach.com.

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Town of South Palm Beach

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DIVISION 6 WOOD AND PLASTICS (NOT USED)

DIVISION 7 THERMAL AND MOISTURE PROTECTION (NOT USED)

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INSTRUCTIONS TO BIDDERS

ARTICLE 1. DEFINED TERMS.

1.1 Terms used in these Instructions to Bidders, which are defined in the Standard General Conditions of the Construction Contract have the meanings assigned to them in the General Conditions. The term "Bidder" means one who submits a Bid directly to Owner (Town of South Palm Beach), as distinct from a sub-bidder, who submits a bid to a Bidder. The term "Successful Bidder" means the lowest, qualified, responsible and responsive Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award. The term "Bidding Documents" includes the Advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

ARTICLE 2. COPIES OF BIDDING DOCUMENTS.

2.1 Complete sets of the Bidding Documents in the number and for the cost, if any, stated in the Advertisement or Invitation to Bid may be obtained from the Owner or downloaded from the Town's website: <http://www.southpalmbeach.com> (unless another issuing office is designated in the Advertisement or Invitation to Bid).

2.2 Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.3 Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

2.4 AutoCad files and/or raw data will not be provided for use in preparing Bids.

2.5 For information concerning this Bid, please contact: Joseph Kusnir, Jr., P.E., Project Representative for the Town at (561) 277-6602.

ARTICLE 3. QUALIFICATIONS OF BIDDERS.

3.1 To demonstrate Bidder's qualifications to perform the Work, Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for below:

- A. Evidence of Bidder's authority to do business in the State of Florida, Palm Beach County and the Town of South Palm Beach.
- B. Bidder's state contractor license number, if applicable.
- C. References from a minimum of three (3) other project owners for comparable projects.
- D. Letter establishing the Bidder's bonding capacity for the value of the Project.
- E. The Owner reserves the right to request a Bidder under consideration for award to furnish a confidential certified financial statement, current within the past quarter, which must be a complete report of the financial resources and liabilities or as otherwise requested by the Owner. Regardless of the foregoing, such information will be subject to F.S. 119.01, *et seq.*

3.2 Competency Requirements. Bids will be considered only from firms which are regularly engaged in the business of providing the contracting services as described in this Invitation to Bid and who can produce evidence that they have established a satisfactory record of performance for a reasonable period of time; have sufficient financial support, sufficient personnel, delivery equipment and organization to insure that they can satisfactorily perform the construction of the project if awarded a Contract under the terms and conditions herein stated. The term "equipment and organization" as used herein shall be construed to mean a fully equipped and well-established company in line with the best business practices in the industry and as determined by the proper authorities of the Owner. Pre-award inspection of the Bidder's facility may be made prior to award of Contract.

ARTICLE 4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE.

4.1 Subsurface and Physical Conditions

- A. Reports and drawings, if any, will be attached to the Contract Documents. Such reports and drawings may include:

- (1) Those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site.
 - (2) Those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. Copies of reports and drawings will be made available by Owner to any Bidder on request. Unless otherwise set forth in the Supplementary Conditions, there is no “technical data” in any of the reports and drawings that may be relied upon by the Contractor. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.2 Underground Facilities

Information and data shown or indicated in the Bidding Documents, if any, with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner or others.

4.3 Hazardous Environmental

- A. Reports and drawings known to Owner relating to a Hazardous Environmental Condition identified at the Site, if any, will be attached to the Contract Documents.
- B. Copies of reports and drawings will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents. Unless otherwise set forth in the Supplementary Conditions, there is no “technical data” in any of the reports and drawings that may be relied upon by the Contractor. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.4 Costs for such documents will be based on current rates for reproduction and will not be eligible for any refund.

4.5 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the site which was not shown or indicated in the Drawings or Specifications or identified in the Bidding Documents to be within the scope of the Work, appear in Paragraph 4.06 of the General Conditions.

4.6 On request in advance, Owner will provide each Bidder access to the site(s) to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes, clean up, and restore the site to its former condition upon completion of such activities. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.

4.7 It is the responsibility of each Bidder before submitting a Bid, to:

- A. Examine and carefully study the Bidding Documents thoroughly and other related data identified in the Bidding Documents;
- B. Visit the site to become familiar with and satisfy Bidder as to the general, local and Site conditions that may affect cost, progress, performance or furnishing of the Work;
- C. Become familiar with and satisfy Bidder as to all federal, state and local Laws, rules, regulations, codes, ordinances, directives and guidelines that may affect cost, progress, performance or furnishing of the Work;
- D. Carefully study all identified reports, tests and drawings, if any, related to surface, subsurface and physical conditions and Hazardous Environmental Conditions;

- E. Consider the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the site; the Bidding Documents; and the identified Site-related reports and drawings, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents;
- F. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
- G. Become aware of the general nature of the work to be performed by Owner and others, if any, at the Site that relates to the Work;
- H. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
- I. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

4.8 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 5. PREBID MEETING

5.1 A non-mandatory Pre-bid Meeting will be held on **July 15, 2021, at 10:00 a.m.** (local time) at Town Hall, 3577 S. Ocean Blvd., South Palm Beach, FL 33480. Representatives of the Owner and Engineer will be present to discuss the Project. Bidders are strongly encouraged to attend and participate in the Meeting. Owner will endeavor to transmit to all prospective Bidders of record any addenda as Owner and/or Engineer considers necessary in response to questions arising at the Meeting; however, it is the sole responsibility of every bidder to verify with the Owner whether any addendum has been issued prior to submitting a bid.

ARTICLE 6. SITE AND OTHER AREAS.

6.1 The Site(s) is identified in the Bidding Documents. Easements for permanent structures or permanent changes in existing facilities, if any, are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

ARTICLE 7. INTERPRETATIONS AND ADDENDA.

7.1 All questions about the meaning or intent of the Contract Documents are to be directed, in writing, to the Owner, attention **Robert Kellogg, Town Manager**, or by email at rkellogg@southpalmbeach.com. Interpretations or clarifications considered necessary by the Engineer in response to such questions will be issued by Addenda. **Questions received five (5) or less days prior to the date set for the opening of Bids may not be answered.** Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. The Owner will endeavor to make sure all potential bidders receive such addendum by posting the addendum on the Town's website (www.southpalmbeach.com) for the respective solicitation; however, it is the sole responsibility of every bidder to verify with the Owner whether any addendum has been issued prior to submitting a bid.

7.2 Submission of a Bid constitutes acknowledgment by the Bidder of the receipt of Addenda. All Addenda are a part of the Bid documents and each Bidder will be bound by such Addenda, whether or not received by him. It is the responsibility of each Bidder to verify that he has received all Addenda issued before Bids are opened.

7.3 Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or the Engineer.

ARTICLE 8. BID SECURITY.

8.1 Each Bid must be accompanied by Bid security made payable to Owner in an amount of ten percent (10%) of the Bidder's maximum Bid price and in the form of a certified or bank check or a Bid Bond (on form attached, if a form is prescribed) issued by a surety meeting the requirements of Paragraph 5.01 of the General Conditions and section 287.0935, Florida Statutes and made payable to the Town of South Palm Beach.

8.2 The Bid security of the Successful Bidder shall be retained until such Bidder has executed the Contract Documents and furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security upon request after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award and the Bid security of the Bidder shall be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the Effective Date of the Agreement or the **121st** day after the posting of the recommended award, whereupon Bid security furnished by such Bidders will be returned. Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award, will be returned within seven days after the Bid opening.

ARTICLE 9. CONTRACT TIME.

9.1 The number of days within which or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the Contract Time) are set forth in the Bid Form and the Agreement. If Contract Times are left blank in the Bid Form, the time for Substantial Completion and final completion are to be set forth by Bidder in the Bid and will be included in the Agreement. The times will be taken into consideration by Owner during the evaluation of Bids, and it will be necessary for the Successful Bidder to satisfy Owner of Bidder's ability to achieve Substantial Completion and Final Completion within the times designated in the Bid.

ARTICLE 10. LIQUIDATED DAMAGES.

10.1 Provisions for liquidated damages, if any, are set forth in the Agreement.

ARTICLE 11. MATERIALS; SUBSTITUTE OR "OR-EQUAL" ITEMS.

11.1 All materials supplied by the Contractor under the provisions of this Bid shall be new materials of the kind and character called for in the plans and Specifications. Defective equipment or material damages in the course of installation or tests shall be replaced or repaired in a manner satisfactory to the Owner. All materials and equipment to be furnished under this Bid shall be the standard product of a manufacturer regularly engaged in the production of such material and shall be the manufacturer's current standard design.

11.2 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, written application for such acceptance must be received by Engineer **at least 15 days prior to the date for receipt of Bids**. Each such request shall conform to the requirements of Paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

ARTICLE 12. SUBCONTRACTORS, SUPPLIERS AND OTHERS.

12.1 If the Bid Form, Specifications or Supplementary Conditions require (or if Owner requests after Bids are received) the identity of certain Subcontractors, Suppliers and other persons and organizations (including those who are to furnish the

principal items of material and equipment) to be submitted to Owner in advance of the specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within seven days after the Bid opening (or seven days after request by Owner) submit to Owner a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualifications for each Subcontractor, Supplier, person or organization if requested by Owner. Subcontractors shall be required to meet the Competency of Bidder and References requirements set forth in the General Information section of the Contract Documents. If Owner or Engineer after due investigation has reasonable objection to any proposed Subcontractor, Supplier, or other person or organization, either may, before the Notice of Award is given, request the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid price.

12.2 If apparent Successful Bidder declines to make any such substitution, Owner may award the contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom Owner or Engineer does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and the Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions. All subcontractors, suppliers and other persons and organizations proposed for those portions of the work shall be properly licensed to perform such work.

12.3 No Contractor shall be required to employ any Subcontractor, Supplier, other person, or organization against whom Contractor has reasonable objection.

ARTICLE 13. PREPARATION OF BID AND BID FORM.

13.1 The Bid Form is included with the Bidding Documents; additional copies may be obtained from the Owner (or the issuing office). Bid submittals must be made on the blank forms provided herein. All blank spaces in the Bid form must be filled in, regardless of whether quantities are shown, and no change shall be made either in the phraseology of or in the items mentioned in the Bid form.

13.2 All blanks on the Bid Form must be completed in ink or by typewriter.

13.3 Each Bid Form shall specify a unit price written in figures for each of the separate items as called for, except when the Bid calls for a lump sum. Lump sum Bids shall be shown in figures.

13.4 Any Bid submittal which does not contain prices set opposite each of the items for which there is a blank space will be cause for rejection. Any items not bid upon shall be indicated "NO BID" in place of the price. Any Bid which in any manner fails to conform to the conditions of the published notice will be cause for rejection.

13.5 In the event of an extension error, the unit price will prevail and the Bidder's total offer will be corrected accordingly. In the event of addition errors, the extended totals will prevail and the Bidder's total offer will be corrected accordingly. If there is a conflict, words take precedence over figures. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

13.6 Bids by corporations or such entities such as, but not limited to a Limited Liability Company must be executed in the corporate name by the president, vice-president or manager (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary, if applicable. The corporate address and state of incorporation must be shown below the signature.

13.7 Bids by partnerships must be executed in the partnership name and signed by a general partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature. Bids by Limited Liability Companies must be executed in accordance with their corporate documents. Bids by an individual must be signed by the individual and include the primary mailing address of the individual.

13.8 All names must be typed or printed below the signature. Bids must be signed in ink by the Bidder with the signature in full.

13.9 The Bid shall contain an acknowledgement of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).

13.10 The address and telephone number for communications regarding the Bid must be shown.

13.11 Bids that contain any omission, erasure, alteration, addition, or item not called for, or that show irregularities of any kind, will be considered as informal or irregular. This will be cause for the rejection of a Bid.

13.12 If a Bidder wishes to change unit prices prior to Bid submission, they shall strike the unit price and add the changes in the appropriate space. Changes shall be initialed by the person submitting the Bid. Any changes or alteration of unit prices in the Bid shall be initialed. Failure to initial these changes or illegible entries of corrections or unit prices may be cause for the rejection of the Bid as informal or irregular.

ARTICLE 14. VARIANCES.

14.1 The Bidder shall be responsible for reading very carefully, and understanding completely, the requirements and the Specifications for the Contract being bid. For purposes of Bid evaluation, Bidder must indicate any variances to the Contract Documents, including but not limited to, Specifications, terms and conditions, no matter how slight. If variations are not stated in the Bid, it shall be construed that the Bid fully complies with the Bidding Documents, including but not limited to, Specifications, terms and conditions as given herein.

ARTICLE 15. VENDOR SERVICE REPRESENTATIVE.

15.1 The Bidder must submit with its Bid the name, address and phone number of the person(s) to be contacted for the placement of an order and/or coordination of service. A contact for regular work-hours and after-hours, weekends, and holidays must be submitted with the Bid.

ARTICLE 16. SUBMISSION OF BIDS.

16.1 Bids shall be submitted no later than at the date and time prescribed and at the place indicated in the Advertisement /Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the Bid Number (and, if applicable, the designated portion of the Project for which the Bid is submitted) and name and address of the Bidder and accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation **Sealed Bid No. 7-2-2021 ITB FOR THE PURCHASE AND INSTALLATION OF SOLAR LIGHTING** to be opened at 10:00 a.m. local time, on August 2, 2021, on the face of it.

16.2 It is the sole responsibility of the Bidder to ensure that the Bid reaches the Clerk's Office on or before the closing date and time. The Owner shall in no way be responsible for delays caused by any occurrence or excuse. Offers by telephone, telegram or facsimile will not be accepted. The Bid time shall be scrupulously observed. Under no circumstances shall Bids delivered after the date and time specified be considered. Such Bids will be returned unopened to the Bidder.

16.3 All Bids must be submitted with one (1) original and two (2) complete copies.

16.4 The submission of a Bid shall constitute an incontrovertible representation by the Bidder that the Contract Documents are sufficient in scope and detail to indicate and convey a clear understanding of all terms and conditions for performance.

16.5 Failure to provide the required documentation and information with the Bid submitted shall make the Bidder nonresponsive unless the Owner, in its sole discretion and in the best interests of the Owner, determines the acceptability of the materials and value engineering offered through documentation and information available to the Owner as of the date and time of the Bid opening.

ARTICLE 17. MODIFICATION AND WITHDRAWAL OF BIDS.

17.1 Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to date and time set for the opening of Bids. Any Bid not so withdrawn shall, upon opening, constitute an irrevocable offer until one or more of the Bids have been duly accepted by the Owner.

17.2 If, within twenty-four hours after Bids are opened, any Bidder files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

17.3 A Bidder shall not be allowed to modify its Bid after the opening date and time except as otherwise set forth herein.

ARTICLE 18. OPENING OF BIDS.

18.1 Bids will be opened publicly as indicated in the Advertisement or Invitation to Bid.

18.2 When Bids are opened publicly they will be read aloud, and the amounts of the base Bids and major alternates (if any) will be made available after the opening of Bids.

18.3 Bid files may be examined during normal working hours, after Bid opening, by appointment and pursuant to Florida Statutes.

ARTICLE 19. BIDS TO REMAIN SUBJECT TO ACCEPTANCE.

All Bids will remain subject to acceptance for 120 days after the posting of the intended recommended award, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to that date.

ARTICLE 20. ADDITIONAL TERMS AND CONDITIONS.

20.1 No additional terms and conditions included with the Bid response shall be evaluated or considered and any and all such additional terms and conditions shall have no force and effect and are inapplicable to this Bid, whether submitted either purposely through intent or design or inadvertently appearing separately in transmittal letters, Specifications, literature, price lists or warranties. It is understood and agreed that these Instructions, the General and Supplementary Conditions and the Specifications in this Bid solicitation are the only conditions applicable to this Bid and the Bidder's authorized signature affixed to the Bid form attest to this.

ARTICLE 21. RESPONSIVE AND RESPONSIBLE BIDDER.

21.1 Only those Bidders considered both responsive and responsible shall be considered for award of a Contract by the Owner. A responsible Bidder shall be a person, firm, partnership, or corporation or other entity who has submitted a Bid, which conforms in all material respects to the Contract Documents and the requirements of the Bidding Document. A responsible Bidder shall be a person, firm, partnership, corporation or other such entity that has the capability in all respects to perform fully the Contract Document requirements and has the integrity and reliability which will assure the good and faithful performance of the Contract.

ARTICLE 22. EVALUATION OF BIDS AND AWARD OF CONTRACT; CONE OF SILENCE.

22.1 If the contract is to be awarded, it will be awarded to the lowest, responsive and responsible bidder whose bid meets the requirements and criteria set forth in this ITB. Owner reserves the right to reject any and all Bids, to waive any and all informalities not involving price, time or changes in the Work, and the right to disregard all nonconforming, nonresponsive, unbalanced or conditional Bids. Also, Owner reserves the right to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to the Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet the Competency of Bidder and Reference requirements set forth herein or fails to meet any other pertinent standard or criteria established by Owner.

22.2 In evaluating Bids, Owner will consider the qualifications, competency and references of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and/or lump sums and other data, as may be requested in the Bid Form or prior to the Notice of Award.

22.3 Owner may consider the qualifications, competency, and experience of Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in Supplementary Conditions (or as requested by Owner after the Bids are received). Owner also may consider the operating costs, maintenance requirements, performance data, and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

22.4 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers, and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

22.5 If the contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within 120 days after the posting of the recommended award.

22.6 When Bidder is permitted to designate the Contract Time, Bid prices will be compared after adjusting for differences in the time designated in the Bid for Substantial Completion.

22.7 The successful Bidder, who is awarded the contract, shall be required to furnish a 100% Construction Payment and Performance Bond meeting the requirements of Section 255.05 Florida Statutes.

22.8 Unless communication occurs during a publicly noticed meeting, all communication between the Town Council Members, Selection Committee Members, if applicable, Town employees and agents and any entity or person seeking to be awarded a contract (including their lobbyists and potential subcontractors) is prohibited until the time of award, rejection of all responses or some other action by the Council to end the selection process.

ARTICLE 23. BID TABULATIONS

23.1 Bid tabulations with recommended awards will be posted for review at the offices of the Clerk. Bid tabulations will not be provided by telephone.

23.2 Tie Bids may be awarded to one of the qualified Bidders based on the criteria, in the following order:

- a)
 - i) Availability or completion period
 - ii) Previous Contractor Record
 - iii) Drug Free Workplace

- b) If all conditions are equal, the award shall be determined by drawing lots or flip of a coin, as determined by the Owner.

ARTICLE 24. DISQUALIFICATION OF BIDDER

24.1 Bidder may be disqualified and its Bid rejected for any of the following:

- a) Bidder does not meet the Competency of Bidder and Reference requirements set forth herein.
- b) Reason to believe that collusion exists among or between Bidders
- c) Unbalanced Bid; that is, Bid in which the prices bid for some items are out of all proportion to those Bids of others.
- d) Bidder's uncompleted workload, which in the judgment of the Owner, may cause detrimental impact or impair the prompt completion of this Contract.
- e) Lack of responsibility on the part of Bidder, (for example, no Bidder would be considered responsible who had failed to carry out any Contract in which the Owner had been directly or indirectly concerned), or to which Bidder failed to perform on other projects.
- f) A determination by Owner of the Contractor's lack of experience or lack of competency as may be revealed by qualification statements, financial statements, experience records, references, or other questionnaires.
- g) Substantial evidence of bad character or dishonesty.
- h) Bidder is involved in any current litigation with Owner.
- i) Bidder has defaulted on any contract or is in arrears on any contract.

ARTICLE 25. CONTRACT SECURITY.

25.1 Article 5 of the General Conditions and the Supplementary Conditions set forth Owner's requirements as to performance and payment Bond. When the successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required performance and payment Bond.

ARTICLE 26. SIGNING OF AGREEMENT.

26.1 When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within 15 days thereafter, the Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bond. In the event the successful Bidder fails to execute the Contract and return same to the Owner within the stipulated fifteen (15) days, the Owner may disqualify the Bid, and said Bidder shall not be permitted to contest to the contrary and does waive such right upon submitting a Bid.

ARTICLE 27. DISPUTES

27.1 Any actual or prospective Bidder, Proposer, or Contractor who is aggrieved in connection with a solicitation or award of a Bid or contract may avail themselves of the procedures contained in Section 2-431(d)(6) of the Owner's Code of Ordinances as amended for time to time in order to resolve disputed matters or complaints.

ARTICLE 28. LICENSES, PERMITS, AND CERTIFICATION.

28.1 It shall be the responsibility of the Contractor to obtain at no additional cost to the Owner any and all licenses and permits required to complete this Contractual service.

28.2 When applicable, vendor must hold a Certificate of Competency issued by the State of Florida or the Palm Beach County Construction Industry Licensing.

28.3 A business tax receipt obtained from the Owner shall be required of any person maintaining a permanent business location or branch office within the Town of South Palm Beach.

28.4 A copy of any licenses and permits shall be submitted with the Bid and must be in the name of the vendor shown on the Bid submittal.

ARTICLE 29. PREPARATION EXPENSE.

29.1 Neither the Owner nor its representatives will be liable for any expenses incurred in connection with the preparation, presentation or submittal of any Bid.

ARTICLE 30. QUANTITIES.

30.1 In the case of unit price items, the quantities of materials to be furnished under this Contract, as given in the Bid, are to be considered as approximate only and are to be used solely for the comparison of Bids received. The Owner nor its representatives does not expressly or by implication represent that the actual quantities involved will correspond exactly therewith; nor shall the Bidder place misunderstanding or deception because of such estimate or quantities. Payment to the Contractor will be made only for the actual quantities of material furnished in accordance with the Contract Documents, and it is understood that the quantities may be increased or diminished as provided in the General Conditions without in any way invalidating any of the unit prices Bids.

ARTICLE 31. NON-COLLUSION.

31.1 Bidder certifies that this Bid is made without prior understanding, agreement, or connection with any individual, firm, partnership, corporation or other entity submitting a Bid for the same materials, services, supplies, or equipment and is in all respects fair and without collusion or fraud. No premiums, rebates, or gratuities are permitted with, prior to, or after any delivery of material or provisions of services. Any violation of this provision may result in Contract cancellation, return of materials or discontinuation of services, and the possible removal of Bidder from the vendor Bid list(s).

ARTICLE 32. CODE OF ETHICS.

32.1 If any Bidder violates or is a party to a violation of the Code of Ethics of the Owner, Palm Beach County, and/or of the State of Florida with respect to this Bid, such Bidder may be disqualified from performing the work described in this Bid or from furnishing the goods or services for which this Bid is submitted and may be further disqualified from bidding on any future Bids for work or for goods or services for the Owner.

ARTICLE 33. CONFLICT OF INTEREST.

33.1 The award is subject to any and all applicable conflict of interest provisions found in the policies or Code of Ordinances of the Town, the Palm Beach County Code of Ethics, and found in the Florida Statutes. All Bidders must complete the Conflict of Interest Form attached hereto.

ARTICLE 34. DRUG FREE WORKPLACE PROGRAMS.

34.1 Preference may be given to businesses with Drug-Free Work Place Programs. Whenever two or more Bids which are equal with respect to price, quality, and service are received by the Owner for the procurement of commodities or contractual services, a Bid received from a business that completes the attached DFW form certifying that it is a DFW may be given preference in the award process.

ARTICLE 35. EEO STATEMENT.

35.1 The Owner is committed to assuring equal opportunity in the award of contracts and, therefore, complies with all laws prohibiting discrimination on the basis of race, color, religion, national origin, age, and sex.

ARTICLE 36. LEGAL REQUIREMENTS.

36.1 Federal, State, County and Owner laws, ordinances, rules, codes, guidelines, directives and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the Bidder shall in no way be a cause for relief from responsibility.

ARTICLE 37. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT.

37.1 The Bidder certifies that all equipment and materials contained in this Bid shall meet all O.S.H.A. requirements. Bidder further certifies that, if it is the successful Bidder and the equipment and/or materials delivered are subsequently found to be deficient in any O.S.H.A. requirements in effect on the date of delivery, all costs necessary to bring the equipment and/or materials into compliance with the aforementioned requirements shall be borne by the Bidder.

ARTICLE 38. NON-APPROPRIATIONS.

38.1 The obligations of the Owner to make a Bid award and sign an agreement under the terms of this "Invitation to Bid" are contingent upon funds lawfully appropriated for this purpose. Should funds not be appropriated for this purpose, the Owner, at its sole discretion, shall have the right to reject all Bids.

ARTICLE 39. FLORIDA PUBLIC RECORDS ACT AND CONTRACT CONTENT OWNERSHIP.

39.1 All material submitted regarding this Bid becomes the property of the Owner. Pursuant to sec. 119.07(1), Fla. Stat., sealed Bids received by the Owner pursuant to a competitive solicitation are subject to disclosure when the Owner provides notice of an intended decision or until thirty (30) after opening of the Bids, whichever is earlier. If the Owner rejects all bids submitted in response to a competitive solicitation and the Owner concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids remain exempt from sec. 119.07(1), Fla. Stat., until such time as the Owner provides notice of an intended decision concerning the reissued competitive solicitation or until the Owner withdraws the reissued competitive solicitation. A Bid is not exempt from disclosure for longer than 12 months after the initial notice rejecting all Bids made by the Owner. Bidder should take special note of this as it relates to any proprietary information that might be included in their offer. Any resulting contract may be reviewed by any person after the contract has been executed by the Owner. The Owner has the right to use any or all information/material submitted in response to this bid and/or any resulting contract from the same. Disqualification of a Bidder does not eliminate this right.

39.2 Contractor shall comply with Florida's Public Records Laws, and, if applicable, specifically agrees to:

- a) Keep and maintain public records required by the OWNER to perform the service.
- b) Upon request from OWNER's custodian of public records, provide the OWNER with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the Owner.
- d) Upon completion of the contract, transfer, at no cost, to the OWNER all public records in possession of the contractor or keep and maintain public records required by the OWNER to perform the service. If the contractor transfers all public records to the Owner upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records

disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the OWNER, upon request from the OWNER'S custodian of public records, in a format that is compatible with the information technology systems of the OWNER.

- e) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION YUDE ALVAREZ, 561-588-8889, yalvarez@southpalmbeach.com, OR BY MAIL AT TOWN OF SOUTH PALM BEACH, 3577 SOUTH OCEAN BLVD., SOUTH PALM BEACH, FLORIDA 33480.**

ARTICLE 40. HOURS OF OPERATION FOR RECEIPT OF BIDS.

40.1 All bids must be received in the Town Clerk's Office, 3577 S. Ocean Blvd., South Palm Beach, Florida 33480.

ARTICLE 41. HOURS OF OPERATION FOR THE PURCHASING DEPARTMENT.

41.1 Robert Kellogg, the Town Manager, is available to accept questions and inquiries and provide responses to requests for information Monday through Friday from 9:00 a.m. to 5:00 p.m.

END OF SECTION

BID PROPOSAL CHECKLIST

Please submit your proposal in this order

- YES___ NO___ 1. Bid submittal – one (1) original and two (2) complete copies
- YES___ NO___ 2. Bid Form signed by authorized representative
- YES___ NO___ 3. Acknowledgment of addendums
- YES___ NO___ 4. Bid Bond/Security or Cashier’s Check
- YES___ NO___ 5. Schedule of Values
- YES___ NO___ 6. Schedule of Subcontractor/Supplies
- YES___ NO___ 7. Schedule of Equipment and Materials
- YES___ NO___ 8. Sworn Statement under Section 287.133(3) (a)
- YES___ NO___ 9. Drug Free Workplace
- YES___ NO___ 10. Trench Safety Affidavit
- YES___ NO___ 11. Questionnaire
- YES___ NO___ 12. References
- YES___ NO___ 13. Insurance Certificates
- YES___ NO___ 14. Copy of Appropriate Licenses
- YES___ NO___ 15. Conflict of Interest Form
- YES___ NO___ 16. Acknowledgement of Conformance with O.S.H.A. Standards
- YES___ NO___ 17. Scrutinized Companies Certification Form

END OF SECTION

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, _____, as Principal, hereinafter called the Principal, and _____, a corporation duly organized under the laws of the State of _____, as Surety, are held and firmly bound unto the Town of South Palm Beach, as Obligee, hereinafter called the Obligee, in the sum of _____ for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; firmly by these presents.

WHEREAS, the Principal has submitted a bid for the PURCHASE AND INSTALLATION OF SOLAR LIGHTING.

NOW, THEREFORE, if the Obligee shall accept the Bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such Bid, and give such bond or bonds as may be specified in the bidding or contract documents with good and sufficient surety for the faithful performance of such contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by said bond, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this _____ day of _____, 2021.

(Witness)

(Principal)

(SEAL)

BY: _____
(Title)

(Witness)

(Surety)

(SEAL)

BY: _____
(Attorney in Fact)

END OF SECTION

BID FORM

(FAILURE TO COMPLETE THIS FORM MAY RESULT IN THE BID BEING DECLARED NON-RESPONSIVE)

ONE (1) ORIGINAL AND TWO (2) COPIES OF BID FORM MUST BE SUBMITTED

PROJECT: **PURCHASE AND INSTALLATION OF SOLAR LIGHTING**

DATE: _____

BIDDER: _____

THIS BID IS SUBMITTED TO:

Town of South Palm Beach
Town Clerk’s Office
3577 S. Ocean Blvd.
South Palm Beach, FL 33480

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 120 days after the posting of the recommended award. BIDDER will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within 15 days after the date of OWNER'S Notice of Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:

(a) BIDDER has examined copies of all the Bidding Documents and of the following Addenda (receipt of all which is hereby acknowledged):

Date _____	Addenda Number _____
Date _____	Addenda Number _____
Date _____	Addenda Number _____

(b) BIDDER has familiarized itself with the nature and extent of the Contract Documents, Work, Site, locality, and all local conditions, Laws, and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.

(c) BIDDER has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions which, if any, are attached to the Contract Documents, as provided in Paragraph 4.02 of the General Conditions, and accepts the determination as set forth in the Bidding Documents of the extent of the technical data contained in such reports and drawings upon which BIDDER is entitled to rely.

(d) BIDDER has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies, if any, (in addition to or to supplement those referred to in (c) above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work as BIDDER considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by BIDDER for such purposes.

(e) BIDDER has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site, if any, and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by BIDDER in order to perform and furnish the Work at the Contract price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.04 of the General Conditions.

(f) BIDDER has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies, if any, with the terms and conditions of the Contract Documents.

(g) BIDDER has given OWNER written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER.

(h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER. BIDDER has not divulged or discussed its Bid with other Bidders.

4. BIDDER agrees to perform all the Work described in Contract Documents, subject to adjustments as provided therein, for the Prices BIDDER provides below.
5. BIDDER declares it understands that the unit quantities, if any, shown on the Bid Form Unit Price Schedule are approximate only and not guaranteed and are subject to either increase or decrease; and that should the quantities of any of the items of Work be increased, the BIDDER agrees to do the additional Work at the unit prices set out herein, and should the quantities be decreased, BIDDER also understands that final payment shall be made on actual quantities completed at the unit prices, and shall make no claims for anticipated profits for any decrease in the quantities.
6. The BIDDER further declares that it understands the OWNER may elect to construct only a portion of the Work covered by these Documents and BIDDER agrees to perform that portion of the Work for which BIDDER is awarded a Contract at the unit or lump sum prices quoted herein.
7. BIDDER agrees that the Work will be substantially completed within 90 **calendar days** after the day when the Contract Time commences to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment within 120 **calendar days** after the date when the Contract Time commences to run.

BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.

8. The following documents are attached to and made a condition of this Bid:

- (a) Required Bid security in the form of Bid Bond.
- (b) Schedule of Values.
- (c) List other documents as pertinent.

9. Written communications concerning this Bid shall be emailed to:

Name: Joe Kusnir, Project Representative for the Town
Email: joe@jupitercivil.com

10. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.
11. BIDDER'S Florida Contractor's License No. _____

12. BIDDER covenants that it is qualified to do business in the State of Florida and has attached evidence of BIDDER'S qualification to do business in the State of Florida, or if not attached, BIDDER covenants to obtain such evidence within five days of request by OWNER to provide evidence.
13. BIDDER represents that it is financially solvent and sufficiently experienced and competent to provide all goods and services required under this ITB, and that all information provided in the Bid is true and correct in all respects.
14. If returning a "NO BID", please explain why: _____

If BIDDER is

An Individual

Name _____ (SEAL)

Signature: _____

Doing business as _____

Business Address: _____

Phone Number: _____ Email Address _____

A Partnership

Firm's Name _____ (SEAL)

General Partner Signature: _____

Business Address: _____

Phone Number: _____ Email Address _____

A Corporation

Corporation's Name _____ (SEAL)

State of Incorporation _____

Authorized Person: _____

Title: _____

Signature: _____

Attest: _____ (Secretary)

Signature: _____

Business Address: _____

Phone Number: _____ Email Address _____

END OF SECTION

SCHEDULE OF SUBCONTRACTORS

(FAILURE TO COMPLETE THIS FORM MAY RESULT IN THE BID BEING DECLARED NON-RESPONSIVE)

Discipline	Subcontractor	Address City, ST Zip	License Number

END OF SECTION

SCHEDULE OF EQUIPMENT AND MATERIALS

(FAILURE TO COMPLETE THIS FORM MAY RESULT IN THE BID BEING DECLARED NON-RESPONSIVE)

Item	Manufacturer	Description

END OF SECTION

**SWORN STATEMENT UNDER SECTION 287.133(3)(a),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

(FAILURE TO COMPLETE THIS FORM MAY RESULT IN THE BID BEING DECLARED NON-RESPONSIVE)

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to _____
[print name of the public entity]
by _____
[print individual's name and title]
for _____
[print name of entity submitting sworn statement]

whose business address is _____

and (if applicable) its Federal Employer Identification Number (FEIN) is _____

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: _____.)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services or any contract for the construction or repair of a public building or public work, to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
1. A predecessor or successor of a person convicted of a public entity crime; or
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133(1)(c), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. [Please indicate which statement applies.]

_____ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity

has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. [attach a copy of the final order]

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[signature]

[date]

STATE OF _____

COUNTY OF _____

Subscribed and Sworn to (or affirmed) before me on _____ by _____
[date]

_____. He/she is personally known to me or has presented
[name]

_____ as identification.
[type of identification]

[Notary's Signature and Seal]

Print Notary Name and Commission No.

END OF SECTION

DRUG FREE WORKPLACE

(FAILURE TO COMPLETE THIS FORM MAY RESULT IN THE BID BEING DECLARED NON-RESPONSIVE)

In accordance with Section 287.087, Florida Statutes, whenever two or more bids are equal with respect to price, quality, and service which are received by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

- (1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- (2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- (3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- (4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than 5 days after such conviction.
- (5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by, any employee who is so convicted.
- (6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign this statement on behalf of _____, I certify that _____ complies fully with the above requirements.

Authorized Representative's Signature

Date

END OF SECTION

TRENCH SAFETY AFFIDAVIT

(FAILURE TO COMPLETE THIS FORM MAY RESULT IN THE BID BEING DECLARED NON-RESPONSIVE)

_____ (NAME OF FIRM) hereby provides written assurance that compliance with applicable Trench Safety Standards identified in the Occupational Safety and Health Administration's Excavation Safety Standards, (OSHA) 29 C.F.R.S. 1926.650 Subpart P will be adhered to during trench excavation in accordance with Florida Statutes 553.60 through 533.64 inclusive (1990), "Trench Safety Act".

The undersigned acknowledges that included in the various items of the proposal and in the Total Proposal Price are costs for complying with the Florida "Trench Safety Act" as summarized below: (Attach additional sheets as necessary).

Schedule Item	Trench Safety Measure (Slope, Trench Shield, etc.)	Cost
	Total	

_____ (Signature) _____ (Date)

STATE OF _____

COUNTY OF _____

Subscribed and Sworn to (or affirmed) before me on _____ by _____ He/she is personally known to me or has presented _____ (type of i.d.) as identification.

Notary Public Signature and Seal

Print Notary Name and Commission No.

END OF SECTION

QUESTIONNAIRE

The following Questionnaire shall be completed and submitted in Envelope with the Bid.

By submission of this Bid, Bidder guarantees the truth and accuracy of all statements and answers herein contained.

1. How many years has your organization been in business? _____

2. What is the last project of this nature that you have completed?

3. Have you ever failed to complete work awarded to you? If so, where and why?

4. Name three individuals or corporations for which you have performed work and to which you refer:

Name	Address	Phone	Fax

Name	Address	Phone	Fax

Name	Address	Phone	Fax

5. List the following information concerning all contracts in progress as of the date of submission of this bid. (In case of co-venture, list the information for all co-ventures.)

Name of Project	Owner	Total Contract Value	Contracted Date of Completion	% of Completion to Date

6. Has the bidder or his or her representative inspected the proposed project and does the Bidder have a complete plan for its performance? _____

7. Will you subcontract any part of this work? If so, give details including a list of each subcontractor(s) that will perform work in excess of the percent (10%) of the contract amount and the work that will be performed by each subcontractor(s).

Subcontractor	Work to be Performed

8. What equipment do you own that is available for the work?

9. What equipment will you purchase for the proposed work?

10. What equipment will you rent for the proposed work?

11. State the name of your proposed project manager and give details of his or her qualifications and experience in managing similar jobs.

12. State the true, exact, correct and complete name of the partnership, corporation, or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do businesses under the trade name.

The correct name of the Bidder is _____

The partnership is a Sole Proprietorship, Partnership, or Corporation or Other Type of Entity _____ (Fill In).

The address of principal place of business is _____.

The names of the Corporate Officers, or Partners, or Individuals doing business under a trade name, are as follows:

List all organizations which were predecessors to Bidder or in which the principals or officers of the Bidder were principals or officers.

List and describe all bankruptcy petitions (Voluntary or Involuntary) which have been filed by or against the Bidder, its parent or subsidiaries or predecessor organizations during the past five (5) years. Include in the description the disposition of each such petition.

List and describe all successful Performance or Payment Bond claims made to your surety(ies) during the last five (5) years. The list and descriptions should include claims against the bond of the Bidder and its predecessor organization(s).

List all claims, arbitrations, administrative hearings and lawsuits brought by or against the Bidder or its predecessor organization(s) during the last five (5) years. The list shall include all case names; case, arbitration, or hearing identification numbers; the name of the project over which the dispute arose; and a description of the subject matter of the dispute and the resolution of the same.

List and describe all criminal proceedings or hearings concerning business related offenses in which the Bidder, its principals or officers or predecessor organization (s) were defendants.

Has the Bidder, its principals, officers, or predecessor organization(s) been debarred or suspended from bidding by any government during the last five (5) years? If yes, provide details.

List and disclose any and all business relations with any members of the Town Council.

END OF SECTION

BID SHEET

By signature below, the Bidder agrees to perform all the Work in full compliance with the Contract Documents and Invitation to Bid and any other document required thereunder or relating thereto to provide a complete project as shown on the plans and specifications under the following bid.

**TOWN OF SOUTH PALM BEACH
BID SHEET BOLLARD MODEL SOLAR PL8 AMBER LED SERIES**

Manufacturer	Model	Color	Temperature	Height	Warranty	Cost Bollard Only	Foundation & Installation	Price per each	45' Hollands	Cost

The Bidder certifies by the signature below that this Bid is current, accurate, and complete.

Bidder Name: _____

Address: _____

Bidder Representative Name (Print): _____

Bidder Representative Title: _____

Signature: _____

Attest: _____ (Corporate Seal)

END OF SECTION

LIST OF DRAWINGS

<i>Sheet Number</i>	<i>Description</i>
	SEE DRAWINGS TOWN OF SOUTH PALM BEACH PATHWAY LIGHTING FROM DECEMBER 18, 2019 (6 SHEETS)

END OF SECTION

AGREEMENT

THIS AGREEMENT is dated and will be effective on the _____ day of _____ in the year 2021, by and between the Town of South Palm Beach, a Florida municipal corporation, (hereinafter called OWNER) and _____ (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

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

PURCHASE AND INSTALLATION OF SOLAR LIGHTING

ARTICLE 2 - ENGINEER

The Project has been designed by the OWNER's Project Representative, Joseph Kusnir, Jr., P.E. of Jupiter Civil Engineering Company, LLC, who is hereinafter called ENGINEER and who is to act as OWNER's Project Representative, shall 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 Work will be substantially completed within 90 days from the date of Notice to Proceed, and shall be finally complete within 120 days from the date of Notice to Proceed.

3.2 **LIQUIDATED DAMAGES.** OWNER and CONTRACTOR recognize that time is of the essence as to each and every obligation of this Agreement and the Contract Documents, and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR and/or CONTRACTOR'S Surety shall pay OWNER Five hundred and 00/100 dollars (\$500.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR and/or CONTRACTOR'S Surety shall pay OWNER Five Hundred and 00/100 (\$500.00) for each day that expires after the time specified in paragraph 3.1 for final completion and readiness for final payment until the Work is completed and ready for final payment.

3.3 No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last five (5) years of weather recorded or otherwise established by the OWNER.

ARTICLE 4 - CONTRACT PRICE

4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, subject to adjustment as provided therein, in current funds as follows:

The amount of _____ (\$ _____), which is based on the price(s) in the Schedule of Values.

ARTICLE 5 - PAYMENT PROCEDURES

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

5.1. **PROGRESS PAYMENTS.** OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or about the 10th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in Paragraph 2.07 of the General Conditions (and in the case of Unit Price Work, if any, based on the number of units completed).

5.1.1. Prior to successful completion of 50% of the work, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with Paragraph 14.02 of the General Conditions and any applicable Supplementary Conditions.

90% of Work completed.

0% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in Paragraph 14.02.A of the General Conditions).

5.1.2. Upon successful completion of 50% of the work, progress payments will be made in an amount equal to 95% of work completed, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with Paragraph 14.02 of the General Conditions and any applicable Supplementary Conditions.

5.2. **FINAL PAYMENT.** Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, and settlement of all claims, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07 of the General Conditions.

ARTICLE 6

(This Article left blank intentionally).

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS AND COVENANTS

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

7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions, Laws, and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.

7.2. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies, if any, which pertain to the subsurface of physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.03 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.3. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all examinations, investigations, explorations, tests, reports and studies, if any, which pertain to the physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.4. CONTRACTOR has given OWNER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by OWNER is acceptable to CONTRACTOR.

7.5 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

7.6 CONTRACTOR agrees that upon completion of the work in accord with the Plans, the Contractor will provide a set of "as-built" plans to be certified by the Engineer of Record/CEI that the necessary improvements have been completed in accordance with the Plans as the same may be modified in accord with the terms of this agreement

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.

8.2 Performance Bond and Payment Bond (plus Power of Attorney Forms as applicable).

8.3 Notice of Award.

8.4 The ITB, including but not limited to the, General Conditions and Supplementary Conditions and General Requirements.

8.5 Drawings attached hereto and/or referenced in the List of Drawings (which may or may not be attached hereto) and Technical Specifications.

8.6 Addenda numbers 0 to _____, inclusive. No addenda issued.

8.7 CONTRACTOR'S Bid and Bid Bond.

8.8 Any other document required by this Agreement, the Bidding Documents, or the Contract Documents whether or not the same is attached hereto.

8.9 The following which may be delivered or issued after the Effective Date of the Agreement may not be attached hereto: Notice to Proceed, Warranty of Title form, Final Release of Liens Form, all written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.04 and 3.05 of the General Conditions.

8.10 The documents listed under Article 8 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 3.04 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 assignment 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 on 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 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. Failure of either party to enforce or exercise any right(s) under the Contract Documents shall not be deemed a waiver of either party's right to enforce said right(s) at any time thereafter.

9.5 The CONTRACTOR agrees to be bound by all the terms and conditions set forth in the Contract Documents. To the extent that a conflict exists between this Agreement and the remaining Contract Documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail. To the extent that a conflict exists between the remaining Contract Documents, the terms, conditions, covenants, and/or provisions of the Contract Documents shall prevail in the following order of precedence:

1. Any written Amendments;
2. Technical Specifications, Drawings, and Addenda thereto;
3. Supplemental Conditions;
4. General Conditions;
5. CONTRACTOR's Bid; and
6. All remaining Contract Documents (which shall have equal value in order of precedence).

9.6 This Agreement shall not become binding and effective until approved by the OWNER's Town Council of the Town of South Palm Beach or its designated representative.

9.7 In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR understands that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance 2011-009 and is aware of its rights and/or obligations under such ordinance.

9.8 The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

9.9 The CONTRACTOR warrants and represents that all of its employees are treated equally during employment and the provision of all of its services is without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

9.10 The Contract Documents shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

9.11 Contractor shall comply with Florida's Public Records Laws, and, if applicable, specifically agrees to:

- a) Keep and maintain public records required by the OWNER to perform the service.
- b) Upon request from the OWNER's custodian of public records, provide the OWNER with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the Owner.
- d) Upon completion of the contract, transfer, at no cost, to the OWNER all public records in possession of the contractor or keep and maintain public records required by the OWNER to perform the service. If the contractor transfers all public records to the Owner upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the OWNER, upon request from the OWNER'S custodian of public records, in a format that is compatible with the information technology systems of the OWNER.

- e) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION YUDE ALVAREZ, 561-588-8889, yalvarez@southpalmbeach.com, OR BY MAIL AT TOWN OF SOUTH PALM BEACH, 3577 SOUTH OCEAN BLVD., SOUTH PALM BEACH, FLORIDA 33480.**

9.12 Governing Law; Consent to Jurisdiction: The Contract Documents shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions, and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for federal actions, the purposes of any suit, action or other proceeding arising out of, or relating to, the Contract Documents; and, (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever.

9.13 Except where specifically provided for in the Contract Documents, the CONTRACTOR shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from the OWNER for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising out of or related to delay, disruption, interference or hindrance from any cause whatsoever. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery of damages by the CONTRACTOR for hindrances or delays due solely to fraud, bad faith or active interference on the part of the OWNER. Otherwise, the CONTRACTOR shall be entitled only to extensions of the Contract Times as the sole an exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided in the Contract Documents.

9.14 All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the CONTRACTOR or its subcontractors under the Contract Documents shall be considered a "Work for Hire" and the exclusive property of the OWNER. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, the CONTRACTOR and its subcontractors will assign to the OWNER all right, title and interest in and to CONTRACTOR's and/or its subcontractors' copyright(s) for such Documents. CONTRACTOR shall execute and deliver to OWNER such instruments of transfer and take such other action that OWNER may reasonable request, including, without limitation, executing and filing, at OWNER's expense, copyright applications, assignments and other documents required for the protection of OWNER's right to such Documents. The CONTRACTOR shall retain copies of the Documents for a period of three (3) years from the date of completion of the project. The OWNER grants to the CONTRACTOR and its subcontractors the right and/or limited license to use a portion of the Documents prepared by the CONTRACTOR or its subcontractors in future projects of the CONTRACTOR or its subcontractors with said right and/or limited license to use a portion at CONTRACTOR's or its subcontractor's own risk and without any liability to the OWNER. Any modifications made by the OWNER to any of the CONTRACTOR's or its subcontractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the CONTRACTOR or its subcontractor(s) will be at the OWNER's sole risk and without liability to the CONTRACTOR or its subcontractor(s).

9.15 Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

9.16 TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THE CONTRACT DOCUMENTS.

9.17 CONTRACTOR shall comply with all federal, state, and local laws, ordinances, rules and regulations applicable to the work or payment for work hereunder.

9.18 CONTRACTOR shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under the Contract Documents.

9.19 CONTRACTOR agrees that it shall not violate section 287.133(2)(a), Florida Statutes, and further acknowledges and agrees that any conviction during the term of the Contract Documents may result in the termination of the same.

9.20 CONTRACTOR understands that the OWNER considers the employment by any contractor of unauthorized aliens a violation of section 274(A)(e) of the Immigration and Nationality act. If the CONTRACTOR knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the Contract Documents.

9.21 CONTRACTOR guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against the OWNER or CONTRACTOR, in connection with the Contract Documents.

9.22 The parties agree that the Contract Documents are not intended, by any provision or part thereof, to create in the public or any member thereof, a third party beneficiary under the Contract Documents, or to authorize anyone not a party to the Contract Documents to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract Documents.

9.23 CONTRACTOR agrees that the CONTRACTOR, its employees, representatives, agents or subcontractors are not agents of the OWNER as a result of the Contract Documents.

9.24 Scrutinized Companies.

a) CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the OWNER may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

b) If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the OWNER may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

C. The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

D. The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the OWNER for the term of this Agreement, including any and all renewals.

E. The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the OWNER of the same.

F. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

9.25 E-Verify. Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien;

3. Maintain copies of all subcontractor affidavits for the duration of this Agreement;
4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and
6. Be aware that if the Town terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the CONTRACTOR may not be awarded a public contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the Town as a result of the termination of the Agreement.

ARTICLE 10 - INDEMNIFICATION

10.1 [This space left blank intentionally].

10.2 CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER and all of their respective officers, agents, and employees, from and against all claims, liabilities, damages, losses, costs and expenses, including, but not limited to, reasonable costs, collection expenses, reasonable attorneys' fees, fees and charges of engineers, architects and other professionals, and all court, arbitration or other dispute resolution costs which may arise because of the negligence (whether active or passive), recklessness or intentional wrongful misconduct, in whole or in part (whether joint, concurrent, or contributing), of the CONTRACTOR, its officers, agents, employees, or persons otherwise utilized by CONTRACTOR in the performance or non-performance of its obligations under the Contract Documents. CONTRACTOR recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the OWNER, ENGINEER and when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by OWNER in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida. This clause shall survive the termination of the Contract Documents. Compliance with any insurance requirements required elsewhere in the Contract Documents shall not relieve CONTRACTOR of its liability and obligation to defend, hold harmless and indemnify the OWNER, ENGINEER and as set forth in this article of the Contract Documents. Nothing in the Contract Documents shall be construed or interpreted as consent by the OWNER, ENGINEER, to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes.

10.3 CONTRACTOR shall include the indemnification provision set forth above in all contracts with subcontractors and subconsultants who perform work in connection with the Contract Documents.

ARTICLE 11 – SALES TAX INFORMATION

11.1 The OWNER is exempt from the payment of Florida State Sales and Use Tax.

ARTICLE 12 - PROJECT SIGNAGE AND BARRICADES; MAINTENANCE OF TRAFFIC; PUBLIC SAFETY AND CONVENIENCE

12.1 CONTRACTOR shall provide signs, barricades and flashing lights reasonably necessary for the protection of the work and the safety of the public, as determined and directed by the OWNER, in its sole discretion.

12.2 CONTRACTOR shall, at all times, conduct its work as to insure the least possible obstruction and inconvenience to: normal pedestrian and vehicular traffic; access to all public and private properties during all stages of the Work; and to the general public and the residents in the general vicinity of the Work.

12.3 CONTRACTOR shall be responsible for the proper and efficient maintenance of traffic. No road or street shall be closed to the public, except with the permission of the proper governmental authority.

[SIGNATURE PAGE FOLLOWS.]

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

OWNER: **Town of South Palm Beach**

CONTRACTOR _____

By _____
Bernice Fischer, Mayor

By _____

Attest: _____
Yude Alvarez, CMC, Town Clerk,

Attest: _____

(SEAL)

(CORPORATE SEAL)

Address for giving notices
3577 S. Ocean Blvd.
South Palm Beach, FL 33480

Address for giving notices

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

License No. _____

Agent for service of process:

Glen J. Torcivia, Town Attorney

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

END OF SECTION

OPINION OF ATTORNEY

This is to certify that I have examined the attached Contract Documents for PURCHASE AND INSTALLATION OF SOLAR LIGHTING and that after such examination I am of the opinion that the execution of the Agreement, the Performance Bond and Payment Bond to be provided are in due and proper form.

Glen J. Torcivia, Town Attorney

This _____ day of _____, 2021.

END OF SECTION

TOWN OF SOUTH PALM BEACH
PAYMENT AND PERFORMANCE BOND
(Pursuant to sec. 255.05, Fla. Stat.)

Surety Bond No. _____

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR:

Name:
Principal Business Address:

Telephone Number:

SURETY:

Name:
Principal Business Address:

Telephone Number:

OWNER:

Town of South Palm Beach
3577 S. Ocean Blvd.
South Palm Beach, FL 33480
(561) 588-8889

CONTRACT:

Date:
Amount:
Description (Name and Location):

BOND

Date (Not earlier than Contract Date):
Amount:
Modifications to this Bond Form:

This Bond is issued in favor of the Town of South Palm Beach/Owner conditioned on the full and faithful performance of the Contract.

1. Contractor has entered into an Agreement with the Owner for the project titled PURCHASE AND INSTALLATION OF SOLAR LIGHTING (the "Contract"), with conditions and provisions as are further described in the aforementioned Contract, which Contract, including all of its attachments, exhibits and incorporated documents (hereinafter, collectively, the "Contract Documents") is by reference made a part hereof for the purposes of explaining this bond.

2. Principal and Surety are bound to the Owner in the sum of the Contract Amount set forth above for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

3. THE CONDITION OF THIS BOND is that if Principal:

a. Performs the Work required of and in accordance with the Contract Documents at the times and in the manner prescribed in the Contract Documents, which are made a part of this bond by reference; and

b. In accordance with sec. 255.05, Florida Statutes, promptly makes payments to all persons, defined in sec. 713.01, Florida Statutes, who furnish labor, services or materials for prosecution of the work set forth in the Contract Documents described above; and

c. Pays Owner all losses, damages (including liquidated damages), expenses, costs, and professional fees, including but not limited to attorneys' fees, including appellate proceedings, that Owner sustains because of a default by Principal under the Contract Documents; and

d. Performs the warranty and guarantee of all work and materials furnished under the Contract Documents for the time specified in the Contract Documents, then this bond is void; otherwise it remains in full force.

4. Section 255.05, Fla. Stat., as amended, together with all notice and time provisions contained therein, is incorporated herein by reference in its entirety. Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in sec. 255.05(2) and (10), Fla. Stat. This instrument regardless of its form, shall be construed and deemed a statutory bond issued in accordance with sec. 255.05, Fla. Stat.

5. Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract Documents or the changes does not affect Surety's obligation under this bond and Surety waives notice of such changes.

6. Principal and Surety expressly acknowledge that any and all provisions relating to consequential, delay and liquidated damages contained in the contract are expressly covered by and made a part of this Performance, Labor and Material Payment Bond. Principal and Surety acknowledge that any such provisions lie within their obligations and within the policy coverages and limitations of this instrument.

7. Any action brought under this instrument shall be brought in the state court of competent jurisdiction in Palm Beach County, Florida, and not elsewhere.

Surety and Contractor, intending to be legally bound hereby, subject to the terms included herein and as required under Florida Statutes, do each cause this Performance and Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

Signed and sealed this _____ day of _____, 2021.

Witness

Principal

Title

(Corporate Seal)

Witness

Surety

Attorney-in-Fact
(Attach Power of Attorney)

Print Name

(Corporate Seal)

END OF SECTION

NOTICE OF COMPLIANCE WITH CHAPTER 556, FLORIDA STATUTES

The undersigned Contractor does hereby confirm to the Owner and Engineer that the Contractor has reviewed the provisions of Chapter 556, Florida Statutes, and has provided to “Sunshine State One-Call of Florida, Inc.” the information required under F.S. 556.105 before the commencement of any excavation or demolition required for the Work.

Executed this _____ day of _____ 2021.

(name of Contractor)

(signature)

(print name)

(title)

END OF SECTION

CONTRACTOR'S AFFIDAVIT TO OWNER AND FINAL RELEASE OF LIENS

STATE OF FLORIDA
COUNTY OF _____

Before me, the undersigned authority, authorized to administer oaths and take acknowledgements, personally appeared _____, who, being by me first duly sworn, on oath depose(s) and say(s):

(1) He/she is/they are a (Corporation, Partnership, or Individual) of _____ (State), doing business as _____, hereinafter called "Contractor".

(2) Contractor heretofore entered into a Contract with the Town of South Palm Beach, hereinafter called "Owner" to do Work (furnish material, labor and services) for the construction of _____, located at Palm Beach County, Florida.

(3) Contractor has fully completed construction in accordance with the terms of the Contract, and all lienors have been paid in full, except:

<u>NAME OF LIENOR</u>	<u>AMOUNT DUE AND UNPAID</u>
_____	_____
_____	_____
_____	_____

(4) All Workmen's Compensation claims have been settled and no liability claims are pending, in connection with, arising out of or resulting from the Contractor.

(5) Receipt by the Contractor of the final payment, under the aforementioned Contract, shall constitute a full release and discharge by the Contractor to the Owner of any and all claims of the Contractor against the Owner, arising out of, connected with, or resulting from performance of the obligations of the Contractor pursuant to the Contract Documents.

(6) The term "lienor" as used in this affidavit means any person having a lien or a prospective lien, under the Mechanics Lien Law of Florida, on the land and property of the Owner referred to in paragraph (2) of this affidavit. Further, Contractor represents, warrants and covenants that all subcontractors, materialmen and suppliers have been paid in full. The contractor further provides under penalty of perjury that there are no claims of lien on the project.

(7) This affidavit is given pursuant to the provisions of Florida Statutes Section 713.06 or Section 255.05, whichever is applicable.

Signed and sealed in the presence of:

_____(Entity)

_____ By: _____ (Seal)

Subscribed and Sworn to (or affirmed) before me on this _____ day of _____
by _____ he/she is personally known to me or has
presented _____ as identification.

Notary Public Signature and Seal

Print Notary Name and Commission No.

END OF SECTION

BILL OF SALE, ABSOLUTE

KNOWN ALL MEN BY THESE PRESENTS, that _____, a corporation of _____ County, Florida, party of the first part, for an in consideration of the sum of Ten and No/100 (\$10.00) lawful money of the United States, to it paid by TOWN OF SOUTH PALM BEACH, a municipal corporation of the State of Florida, 3577 S. Ocean Blvd., South Palm Beach, FL 33480, party of the second part, the receipt whereof is hereby acknowledged has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver unto the said party of the second party, its executors, administrators and assigns, the following goods and chattels:

Project Name: PURCHASE AND INSTALLATION OF SOLAR LIGHTING consisting of the components set forth in the final schedule of values as described in Exhibit "A", attached hereto and made a part hereof.

TO HAVE AND TO HOLD the same unto the said party of the second part, its executors, administrators and assigns forever.

AND, it does, for itself and its successors and assigns covenant to and with the said party of the second part, its successors and assigns, that it is the lawful owner of the said goods and chattels; that they are free from all encumbrances; that it has good right to sell the same aforesaid, and that it will warrant and defend the sale of the said property, goods and chattels hereby made, unto the said party of the second part its successors and assigns against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, it has hereunto set its hand and seal this _____ day of _____, 20____.

Signed, sealed and delivered
in the presence of:

WITNESSES:

Signature

Name: _____
Title: _____

Print Name

[Corporate Seal]

Signature

Print Name

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as _____ of _____, a _____ (state) corporation. He/She is personally known to me or has produced _____ as identification.

(stamp)

Print Notary Name: _____

END OF SECTION

FORM OF FINAL RECEIPT

Received this _____ day of _____, _____, from the Town of South Palm Beach, Florida, the sum of _____
(_____) as full and final payment to CONTRACTOR for all work and materials for the Project described as:

PURCHASE AND INSTALLATION OF SOLAR LIGHTING

This sum includes full and final payment for all extra work and material and all incidentals.

CONTRACTOR hereby indemnifies and releases the Town of South Palm Beach from all liens and claims whatsoever arising out of the Contract and Project.

CONTRACTOR hereby certifies that all persons doing work upon or furnishing materials or supplies for the Project have been paid in full. In lieu of this certification regarding payment for work, materials, and supplies, CONTRACTOR may submit a consent of surety to final payment in a form satisfactory to OWNER.

CONTRACTOR further certifies that all taxes imposed by Chapter 212, Florida Statutes (Sales and Use Tax Act), as amended, have been paid and discharged.

(If incorporated, sign below.)

ATTEST:

Secretary

(CORPORATE SEAL)

Name

By: _____

Title: _____

Date: _____

END OF SECTION

**STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT-
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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

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

13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents

(unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

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

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

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

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

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

- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor shall deliver to the Owner, with copies to each additional insured, certificates of insurance (and other evidence of insurance which the Owner or any additional insured may reasonably request) which Contractor is required to purchase and maintain in accordance with the Contract Documents.

2.02 Copies of Documents

- A. The complete invitation to bid including specifications and proposal forms may be obtained by bona fide bidders from the office of the Town Clerk, at Town Hall, 3577 S. Ocean Blvd., South Palm Beach, FL 33480, Monday through Friday, 9:00 a.m. to 5:00 p.m. or from the Town of South Palm Beach's website at: <http://www.southpalmbeach.com>.

2.03 Commencement of Contract Times; Notice to Proceed

- A. The Contract Time will commence to run no later than 30 days after the posting of the recommended award or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier (unless otherwise agreed by Owner and Contractor in writing).

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, if applicable; 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.

2.08 Time of the Essence

- A. Upon acceptance of the Contractor's schedule by the Engineer, satisfaction of construction deadlines contained within such schedule shall be considered material provisions of this Agreement and time shall be of the essence. Unless the Contractor fails to meet agreed upon deadlines and milestones within the prescribed schedule for reasons beyond the Contractor's control as prescribed in this Agreement, the Owner shall be entitled to terminate the Contract as provided herein.

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 knew or reasonably should have known 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:* Reports and Drawings, if any, will be attached to the Contract Documents. Such Reports and Drawings may include:
 - 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:* Unless otherwise set forth in the Supplementary Conditions, Contractor may not rely upon the accuracy of the “technical data” contained in such reports and drawings. Such reports and drawings are not Contract Documents. Contractor shall have full responsibility with respect to subsurface and physical conditions at or contiguous to the Site. Except for such reliance on such “technical data” as set forth in the Supplementary Conditions, if any, 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, if any, 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. If applicable to the Work required by the Contract Documents, 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:* Reports and Drawings, if any, will be attached to the Contract Documents. Such reports and drawings will include those known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Unless otherwise set forth in the Supplementary Conditions, the Contractor may not rely upon the accuracy of the "technical data" contained in such reports and drawings. Such reports and drawings are not Contract Documents. Except for such reliance on such "technical data" as set forth in the Supplementary Conditions, if any, 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.

- 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. [Subsection intentionally left blank.]
- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and their respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, liabilities, damages, losses, costs and expenses, including, but not limited to, reasonable costs, collection expenses, attorneys' fees and court costs, all fees and charges of engineers, architects, and other professionals and all 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, whether such Hazardous Environmental Condition was created actively or passively or whether its creation was joint, concurrent or contributing. 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. Contractor recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the Owner when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by Owner in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida. This clause shall survive the termination of the Contract Documents. Compliance with any insurance requirements required elsewhere in the Contract Documents shall not relieve Contractor of its liability and obligation to defend, hold harmless and indemnify the Owner as set forth in this article of the Contract Documents. Nothing in the Contract Documents shall be construed or interpreted as consent by the Owner to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes. (whether active or passive), misconduct, or other fault, in whole or in part (whether joint, concurrent, or contributing),

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

- A. In accordance with section 255.05, Fla. Stat., as amended from time to time, before commencing the Work or before recommencing the Work after a default or abandonment, the Contractor shall execute and record in the public records of Palm Beach County a payment and performance bond with a surety insurer authorized to do business in the State of Florida, and the Contractor shall be required to provide to the Owner a certified copy of the recorded bond. The Owner may not make a payment to the Contractor until the Contractor has complied with section 255.05(1)(b), Fla. Stat. The performance and payment bonds shall each be 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 [Paragraph intentionally left blank.]

5.06 [Paragraph intentionally left blank.]

5.07 [Paragraph intentionally left blank.]

5.08 [Paragraph intentionally left blank.]

5.09 Acceptance of Bonds and Insurance; Option to Replace

- A. Owner shall review the coverage afforded by or other provisions of the insurance required to be purchased or maintained by Contractor after delivery of insurance certificates to Owner in accordance with Paragraph 2.01B of the General Conditions. Contractor shall furnish to the Owner such additional information in respect to insurance provided by contractor as the Owner may reasonably request. Review of Insurance Policies or Insurance Certificates by the Owner shall not relieve or decrease the liability of the Contractor hereunder. In case of a breach by Contractor of any insurance provision stated in the Contract Documents, the Owner at its option may take out and maintain, at the expense of the Contractor, such insurance as the Owner may deem proper and Owner may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this Contract. All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by Contractor shall contain the name of the Project.

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, if applicable, 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. Contractor shall be responsible to see that the completed Work complies accurately with 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. The superintendent will be Contractor’s representative at the Site and shall have the authority to act on behalf of the Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

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 Monday through Friday, 7:00 a.m. till 6:00 p.m. Contractor will not permit overtime work or the performance of Work on a Sunday 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 or the Supplementary Conditions 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 generally to the progress schedule then in effect and additionally 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.

If the Bid Form or Specifications require (or if requested by Owner prior to the Notice of Award), the apparent successful Bidder and any other Bidder so requested, shall submit a list of all Subcontractors, Suppliers, and other persons or organizations (including those who are to furnish the principal items of material and equipment) in accordance with requirements of the Instructions to Bidders and this Article 6.06B of the General Conditions.

- 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.

Owner or Engineer may furnish to any such Subcontractor, Supplier, or other individual or entity, to the extent practicable, evidence of amounts paid to Contractor in accordance with Contractor's Application for Payment.

- 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, if applicable, 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.

- H. Bidders are strongly encouraged to verify, with Florida's Secretary of State, the corporate status and standing of all subcontractors, suppliers, etc. they will be utilizing to ensure the firm's ability to do business in the State of Florida.

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. [Subsection intentionally left blank.]
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, liabilities, damages, losses, costs and expenses including but not limited to, reasonable costs, collection expenses, attorney's fees, fees and charges of engineers, architects, 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. Contractor recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the Owner when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by Owner in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida. This clause shall survive the termination of the Contract Documents. Compliance with any insurance requirements required elsewhere in the Contract Documents shall not relieve Contractor of its liability and obligation to defend, hold harmless and indemnify the Owner as set forth in this article of the Contract Documents. Nothing in the Contract Documents shall be construed or interpreted as consent by the Owner to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes.

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.
- B. The Contractor shall comply with the provisions and conditions of all Permits that are, or will be, issued to Owner pursuant to this project. Contractor shall be responsible for all corrective actions

necessary as a result of any of Contractor's non-compliance of the permits issued for the performance of this 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 primary 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 may 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 their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, liabilities, damages, losses, costs and expenses, including, but not limited to, reasonable costs, collection expenses, attorneys' fees, all fees and charges of engineers, architects, 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 or non-performance of the Work (whether active or passive, joint, concurrent or contributing). Contractor recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the Owner when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by Owner in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida. This clause shall survive the termination of the Contract Documents. Compliance with any insurance requirements required elsewhere in the Contract Documents shall not relieve Contractor of its liability and obligation to defend, hold harmless and indemnify the Owner as set forth in this article of the Contract Documents. Nothing in the Contract Documents shall be construed or interpreted as consent by the Owner to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes.

- 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;

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; and
 4. all other property, equipment, supplies, and materials owned by the Contractor or its subcontractors and located at or near the Site.
- 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) at no additional cost to the Owner or Engineer. The Owner may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property as described above.
 - 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, including but not limited to all equipment, materials, parts and workmanship, will be in accordance with the requirements and technical specifications of 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. The Contractor shall ensure that the Owner receives all warranties and guarantees referenced in the drawings, plans, and specifications on all equipment, materials, and parts supplied. The warranties listed herein shall have no dollar limit. These warranties are in addition to and not in lieu of any applicable implied warranties.
- 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 acceptance by Owner or any failure to do so;
 6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. 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 their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, liabilities, damages, losses, costs, and expenses, including, but not limited to, reasonable costs, collection expenses, attorneys' fees, all fees and charges of engineers, architects, and other professionals and all court or arbitration or other dispute resolution costs, 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 because of the negligence (whether active or passive),

misconduct, or other fault, in whole or in part (whether joint, concurrent, or contributing), of the Contractor, its officers, agents or employees in the performance or non-performance of its obligations under the Contract Documents. Contractor recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the Owner when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by Owner in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida. This clause shall survive the termination of the Contract Documents. Compliance with any insurance requirements required elsewhere in the Contract Documents shall not relieve Contractor of its liability and obligation to defend, hold harmless and indemnify the Owner as set forth in this article of the Contract Documents. Nothing in the Contract Documents shall be construed or interpreted as consent by the Owner to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes.

- 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 that 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 [Subsection intentionally left blank.]

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 duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE (the "Listing"), as included in the Project Manual, if applicable, and as provided in Paragraph 9.09. If any conflicts exist between the Listing and Paragraph 9.09, the terms and conditions of the Listing shall govern. 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 presented at the Pre-Construction Meeting.

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.
- C. In general, the Owner and Contractor agree that notwithstanding any provision of the Contract Documents there will be no change in the contract time or the contract price unless there has been previously executed by both the elected body of the Owner and the Contractor the change orders specifying, or a written amendment, as the case may be, the change in the contract time, the contract price or either or both of them excepting that in events of extreme emergency whereby there is intermit danger of injury to persons or damage to property in which case the emergency will be dealt with as circumstances demand and both parties agree that in such instances appropriate changes in the contract time, contract price or either or both of them be executed and retroactive in application. The provisions of this change apply to all contract documents.

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.
- B. Contractor is advised and acknowledges that no Change Order which may increase the time and/or amount of the Contract is authorized, whether the same be approved by Owner's staff or Engineer, unless and until that Change Order has been formally approved by the elected body of the Owner.

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.
- 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 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, if applicable), 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. Contractor may not make a claim for additional expenses incurred as a result of a difference between final quantity of any item(s) of Unit Price Work and the estimated quantity of such item(s) in the Contract Documents, unless specifically allowed in the Bid Form. Any adjustments specifically allowed shall be made in accordance with directions in the Bid Form. Owner may make a claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if the Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of such 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.
- F. If contract delays within the Contractor's control are not cured within seven (7) days of notice by Engineer or Owner, Owner shall be entitled to terminate this agreement and dismiss Contractor from the job without further delay or penalty to Owner.

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 48 hour 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. 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. Uncovering Work. All uncovered work and the repair or reconstruction thereof shall be at Contractor's expense.

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 (and, prior to Engineer's recommendation of final payment), Owner 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 or 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

As used in this Article 14, the word "claims" shall mean a demand or assertion by a third party for money or services, including any charges, security interests or encumbrances upon Project funds, real property or personal property.

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 claims 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.
4. The Application for Payment shall be accompanied by an updated project schedule based upon the Work completed as of the date of the Application.

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 claims.
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. Thirty 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. Claims 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 claims;
 - 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.

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 claims. CONTRACTOR shall submit with each application for payment a completed and signed Warranty of Title in the form as provided in the Contract Documents or as otherwise approved by the Owner.

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 claims rights arising out of or claims filed in connection with the Work.

3. In lieu of the releases or waivers of claims 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 claim 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 claims 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 claim.

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.
2. For the Contractor's complete performance of the Work, constituting final payments, or for the Contractor's completing a portion of the Work constituting a partial payment, the Owner will pay and the Contractor will accept, subject to the terms and conditions hereof, the lump sum price or unit prices at which this Contract was awarded plus the amount to be paid for any extra work ordered by approved Change Orders, as provided for in the General Conditions, less credit for any work omitted or left uncorrected pursuant to the terms and conditions of this Contract. The basis of payment for work accomplished under this Contract shall be on the unit price or lump sum whichever is indicated in the schedule of prices under Article 4 of the Agreement. The prices listed in the Agreement, whether on the unit price basis or lump sum basis shall include all mobilization, plant, labor, transportation, materials, tools, and equipment necessary for a complete and operable system as indicated by the Contract Drawings and Specifications. Payment in accordance with the price schedule of the Agreement, and subject to the terms and conditions of this Contract, shall constitute full reimbursement to the Contractor for Work performed under this Contract. The Engineer shall not prepare a final recommendation for payment until such time as the Work has been approved by the applicable State, County or other political subdivision having approval authority. Unit prices will be applied to the actual quantity of work completed and measured as determined by the Engineer pursuant to Paragraph 11.03 of the General Conditions.

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 claims, 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;
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents;
or
 5. If Contractor files or has filed against any proceeding in bankruptcy, which has not been

dismissed within 20 days from such filing, executes an assignment for the benefit of creditors, commits any act of insolvency, fails to make any payments required of him to third parties within 30 days from the date of demand unless such demand is bonded within 10 days thereafter by the Contractor.

- 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, Owner, in its sole discretion, may choose not to terminate Contractor's services 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 15 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. In the Owner's sole discretion, it may request the surety to take over the work and prosecute the same to completion, and the Contractor and its surety shall be liable to the Owner for any excess costs occasioned the Owner thereby. Any contract by the surety to complete the work shall be subject to the approval of the Owner and the Engineer which approval shall not be unreasonably withheld. If the Contractor's right to proceed is so terminated, the surety may take possession of and utilize in completing the work such materials, appliances, equipment and plant as may be on the site of the work and necessary therefore.

15.03 Owner May Terminate For Convenience

- A. The Owner may terminate this contract for convenience upon providing Contractor fourteen (14) days written notice of the same. If this Contract is terminated as provided herein, the Contractor shall be paid for all completed and acceptable work executed and allowable expenses incurred prior to the date of termination. Payment shall include services actually performed in full prior to

termination date, but shall exclude all lost profits, direct, indirect, consequential, special damages, or other damages for the remainder of the project.

If a court of competent jurisdiction finds that the Owner wrongfully terminated this Contract, then in such event, this Contract shall be deemed terminated for convenience as provided for in this Paragraph 15.03A., and the Contractor shall not be entitled to damages or loss of profits, but may be entitled to all items as authorized herein.

15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of the Contractor, the Work is suspended for more than 90 consecutive days by the Owner or under an order of court or other public authority, or Engineer fails to act on any Application for Payment within 30 days after it is submitted, or 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. 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.

15.05 Suspension of Work and Termination

- A. The Owner may suspend or terminate Work and make claims against the existing bonds or insurance where substitutes are not promptly and timely submitted for any insurance or bonds which are either canceled with notice in advance, or where any of the insurance companies, bonding agencies, sureties or the Contractor is actually or there is an indication that same may become insolvent and no adequate substitute is timely submitted therefore.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 Methods and Procedures

- A. If the Owner and Contractor are involved in a dispute between them which they are unable to resolve then prior to either party initiating any formal litigation proceedings, they both agree to submit the dispute to mediation in accordance with the procedures that are utilized in such instances in the Circuit Court in and for Palm Beach County, Florida, with each party to pay its own costs, fees and expenses and the fees of the mediator to be divided equally between them. The provisions of this paragraph are a condition precedent to either party initiating an action against the other party in relation to this contract excepting only situations where an emergency exists creating imminent danger to safety of persons or property.

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 and Venue

- A. This Contract is to be governed by the laws of the State of Florida. The venue for any and all legal action necessary to enforce the Contract Documents will be in Palm Beach County, Florida.

17.06 Headings

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

17.07 Inspector General

- A. In accordance with Palm Beach County ordinance number 2011-009, the Contract Documents may be subject to investigation and/or audit by the Palm Beach County Inspector General. Contractor should review Palm Beach County ordinance number 2011-009 in order to be aware of its rights and/or obligations under such ordinance and as applicable.

17.08 Enforcement Costs

- A. If any legal action or other proceeding is brought for the enforcement of the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of the Contract Documents, the parties agree that each party shall be responsible for its own attorney's fees.

17.09 Waiver

- A. Failure of either party to enforce or exercise any right(s) under the Contract Documents shall not be deemed a waiver of either party's right to enforce or exercise said right(s) at any time thereafter.

17.10 Jury Trial

- A. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THE CONTRACT DOCUMENTS.

17.11 Independent Contractor

- A. The Contractor is, and shall be, in the performance of all services under this Contract, an Independent Contractor, and not an employee, agent, or servant of the Owner. All persons engaged in any of the services performed pursuant to this Contract shall at all times, and in all places, be subject to the Contractor's sole direction, supervision, and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the services.

17.12 Access and Audits

- A. The Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Work for at least five (5) years after final payment is made. The Owner shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Contractor's place of business. In no circumstances will Contractor be required to disclose any confidential or proprietary information regarding its products and service costs.

17.13 Time

- A. Time is of the essence in all respects under the Contract Documents.

17.14 Preparation

- A. This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

17.15 Representation and Binding Authority

- A. Contractor's representative below has full power, authority and legal right to execute and deliver these Contract Documents and perform all of its obligations under the Contract Documents. By signing the Contract Documents, the representative hereby represents to the Owner that he/she has the authority and full legal power to execute the Contract Documents and any and all documents necessary to effectuate and implement the terms of the Contract Documents on behalf of the party for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in the Contract Documents.

ARTICLE 18 - NO DAMAGES FOR DELAY

18.01 No Damages for Delay

- A. NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST OWNER BY REASON OF ANY DELAYS. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Owner for direct, indirect, consequential, impact or other costs,

expenses, or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable, or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delays, in accordance with and to the extent specifically provided herein.

END OF SECTION

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract and other provisions of the Contract Documents as indicated below. All provisions, which are not so amended or supplemented, remain in full force and effect. The General Conditions may also be supplemented elsewhere in the Contract Documents.

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract have the meanings assigned to them in the General Conditions.

PART 1 – MODIFICATIONS AND SUPPLEMENTS TO GENERAL CONDITIONS

1. Article 4. Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions; Reference Points

SC-4.02B: Limited Reliance by Contractor on Technical Data Authorized

[Insert the identification of any “technical data”, if any, found in reports or drawings that may be relied upon by the Contractor.] NOT APPLICABLE.

SC-4.06B: Limited Reliance by Contractor on Technical Data Authorized

[Insert the identification of any “technical data”, if any, found in reports or drawings that may be relied upon by the Contractor.] NOT APPLICABLE.

2. Article 5. Bonds and Insurance

SC-5.01: Performance, Payment and Other Bonds. Bidders are reminded to read Article 5 regarding the minimum requirements of the bonds. Bidders must use the bond forms enclosed herein.

SC-5.04 Contractor’s Insurance. The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

Paragraph 5.04.A. 1. -- Statutory

Paragraph 5.04.A. 2. -- Statutory

Paragraph 5.04.A. 3., 5.04.A. 4. \$1,000,000 each occurrence
\$3,000,000 general aggregate

Paragraph 5.04.A. 5. \$1,000,000 each occurrence
\$3,000,000 general aggregate

Paragraph 5.04.A. 6. \$500,000 bodily injury each occurrence
\$500,000 property damage each occurrence
\$1,000,000 combined single limit in lieu of
separate limits

SC-5.06 The maximum deductible amount for the insurance provided in accordance with paragraphs within Article 5.06 shall be \$10,000.00.

3. Article 6. Concerning Subcontractors, Suppliers, and Others:

SC-6.05 Substitutes and “Or-Equals”: **PRODUCTS: The only acceptable product is the make and model of the bollard described in the specifications. The Owner will not be evaluating or accepting any “substitutions” or any “or-equals.”**

SC-6.08 Permits, Licenses: The Contractor is required to have the following licenses: State of Florida General Contractor’s License and either a Palm Beach County Business Tax Receipt or a business tax receipt from the county in the State of Florida in which the Contractor’s business is located.

In addition, Bidders are reminded that all non-Florida corporations must be authorized to conduct business in the State of Florida at the time of bid opening. A non-Florida General Contractor shall comply with one of the following options prior to bid submittal in order to be deemed responsive:

- a) Obtain a Florida General Contractor's License; or
 - b) Obtain a qualifier (licensed as a Florida General Contractor) to get a qualifier's license issued in the name of the company for which he/she is qualifying (the Bidder); or
 - c) Obtain a "limited registration" from the Florida Construction Licensing Board, pursuant to Section 489.117(3), Florida Statutes; or
 - d) Obtain an "endorsement certification" from the Florida Construction Industry Licensing Board pursuant to Section 489.115(3), Florida Statutes.
- 4. ENGINEER.** The Owner’s Project Representative shall be Joe Kusnir, Jr., P.E., of Jupiter Civil Engineering Company, LLC. Contractor has no objection to the Project Representative.
- 5. F.O.B. POINT.** The F.O.B. point shall be destination. Contractor shall retain title and assume all transportation charges, responsibility, liability and risk in transit and shall be responsible for the filing of claims for loss or damages.

PART 2 – ADDITIONAL SUPPLEMENTARY CONDITIONS

1. ATTACHMENTS:

The following forms included in the Project Manual shall be used by Contractor for submittals required by the Contract Documents (unless Owner accepts other form):

- a. Construction Payment and Performance Bond.
- b. Contractor’s Affidavit to Owner.

2. DESIGN PROFESSIONALS REPRESENTING OWNER AND/OR ENGINEER AND DIVISION OF RESPONSIBILITIES

- a. Various Design Professionals (i.e. Civil, Structural, Mechanical, Electrical, Groundwater Hydrology, Environmental, etc.) as consultants to Owner and/or Engineer, prepared or assisted in the preparation of Drawings and Specifications for the Project. The Owner and/or Engineer may have the various Design Professionals provide services during construction phase of the Project. The Design Professionals will be representatives of the Owner and/or Engineer. Visits to the site by the Design Professionals will be on the basis of General Conditions Paragraph 9.02. VISITS TO SITE. Also, General Conditions Paragraphs 9.10. LIMITATIONS ON ENGINEER'S RESPONSIBILITIES includes the various Design Professionals for this Project.

MISCELLANEOUS

1. When the Contractor herein receives payment from the Owner for labor, services or materials furnished by subcontractor and suppliers hired by the Contractor, the Contractor shall remit payment due those parties within Ten (10) days after receipt of payment from the Owner, unless otherwise provided for by Florida Law.

2. The parties hereto agree to develop a list of uncompleted items which shall be known as the "Punch List", which shall be those items that are required to be completed by the Contractor within thirty (30) days after the date set for Substantial Completion in the Contract Documents. If the Project herein is a phased project the parties agree to develop such Punch List for each phase based upon the date(s) set for substantial completion of each phase within the time set forth above.

The Owner shall provide the Contractor with a list of Punch List items developed by either, the Owner and/or Engineer. The Contractor agrees to the Punch List developed herein and this process. Regardless of the foregoing, nothing herein shall alter the responsibility of the Contractor to complete all construction services, materials and items contracted herein by the Owner. The Owner shall have the right, but not the obligation, to withhold the Owners, and/or Engineers estimated cost of completion for such items on the Punch List referenced above. The Contractor, by execution of this Contract, agree to the same. Regardless of any provision to the contrary, the Owner may withhold from each of the Contractor's pay requests an amount not to exceed Ten 10% of the payment as retainage until 50% of completion of the Work/Contract as determined by either the Owner or Engineer. The Contractor by execution of this Agreement hereby agrees to the same. After 50% completion of the Contract as determined herein the Owner agrees to reduce the retainage to five (5) % of each draw schedule/pay request of the Contractor. Regardless of the foregoing, nothing herein shall require the Owner to reduce retainage to the Contractor if the Owner has determined that the Contractor is in default or if the Owner or Engineer reasonably believes that the retainage and/or future payments to the Contractor will not be enough for the Owner to complete the Work/Project or cover its damages as a result of the Contractor's breach or default or for any other reason, or there is a good faith dispute by Owner against the Contractor and/or its bonding company.

3. Deductions of Work – The Owner reserves the right to remove any items from the scope of work in the Contract Documents by the deductive change order. Such deduction shall be determined by the Engineer using the Contractor's Schedule of Values. The deductions, if any, shall not be considered a cardinal change to the contract. The parties hereto recognize that the Owner has materially relied on this provision in entering into contract with Contractor. Such value deduction shall be conclusive as it relates to utilizing the Contractor's Schedule of Values.

4. Prior to any payment being made herein the Contractor shall provide all partial release of liens determined by the Owner.

END OF SECTION

RESIDENT PROJECT REPRESENTATIVE

ENGINEER may furnish a Resident Project Representative (RPR), assistants and other field staff to assist ENGINEER in observing performance of the Work of the Contractor. RPR may only be part-time on site, and CONTRACTOR shall coordinate with RPR as required in the Contract Documents.

Through on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. GENERAL

RPR is ENGINEER'S agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. DUTIES AND RESPONSIBILITIES OF RPR

1. SCHEDULES:

Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.

2. CONFERENCES AND MEETINGS:

Attend meetings with CONTRACTOR, such as pre-construction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

3. LIAISON:

- a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR'S superintendent and assist in understanding the intent of the Contract Documents; and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR'S operations affect OWNER'S on-site operations.
- b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

4. SHOP DRAWINGS AND SAMPLES:

- a. Record date of receipt of Shop Drawings and samples.

- b. Receive samples, which are furnished at the site by CONTRACTOR, and notify ENGINEER of availability of samples for examination.
- c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by Engineer.

5. REVIEW OF WORK, REJECTION OF DEFECTIVE WORK, INSPECTIONS AND TESTS:

- a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
- b. Report to ENGINEER whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.

6. INTERPRETATION OF CONTRACT DOCUMENTS:

Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.

7. MODIFICATIONS:

Consider and evaluate CONTRACTOR'S suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.

8. RECORDS:

- a. Maintain at the job site or ENGINEER's office files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.
- b. Record names, addresses, and telephone numbers of all CONTRACTORS, subcontractors and major suppliers of materials and equipment.

9. REPORTS:

- a. Furnish ENGINEERS periodic reports as required of progress of the Work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawings and sample submittals.

- b. Consult with ENGINEER in advance of scheduled major tests, inspections, or start of important phases of the Work.
- c. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from CONTRACTOR and recommend to ENGINEER Change Orders, Work Directive Changes, and Field Orders.
- d. Report immediately to ENGINEER and OWNER upon the occurrence of any accident witnessed by RPR or that was otherwise made known to RPR.

10. PAYMENT REQUESTS:

Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

11. CERTIFICATES, MAINTENANCE AND OPERATION MANUALS:

During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.

12. COMPLETION:

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
- b. Conduct final inspection in the company of ENGINEER, OWNER, and CONTRACTOR and prepare a final list of items to be completed or corrected.
- c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. LIMITATIONS OF AUTHORITY

Resident Project Representative:

- 1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.
- 2. Shall not exceed limitations of ENGINEER's authority as set forth in the Contract Documents.
- 3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors, or CONTRACTOR's superintendent.
- 4. Shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
- 5. Shall not advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the Work.

6. Shall not accept Shop Drawing or sample submittals from anyone other than Contractor.
7. Shall not authorize OWNER to occupy the Property in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

END OF SECTION

GENERAL REQUIREMENTS

1.0 PROJECT LOCATION

This Project is located at Town Hall of the Town of South Palm Beach, 3577 S. Ocean Blvd., South Palm Beach, Florida. See Drawings for specific location.

2.0 SCOPE OF WORK

The Work to be performed by the Contractor includes furnishing all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, mobilization, maintenance of traffic and all other services, facilities and other related construction items of every nature whatsoever necessary to modify, construct, complete, deliver and place in operation the subject Work as shown on the Drawing and/or as herein described. All Work shall be in accordance with the Contract Documents, the Town of South Palm Beach Ordinances and regulations, and the Florida Statutes, and any other applicable specifications.

The Work shall include all necessary labor, materials and equipment to provide for the purchase and installation of solar lighting in accordance with the Town of South Palm Beach Pathway Lighting plan as covered in detail in the Contract Documents.

Survey Requirements

The OWNER shall hire the services of a Professional Surveyor and Mapper, licensed in the State of Florida to stake out the right-of-way line along South Ocean Blvd. and also stake out the utility easement running parallel to the right-of-way. Provide stakes and markers to allow confirmation of the right-of-way/easement location through construction until project completion. The Contractor shall ensure that the final location of the solar lighting does not encroach into the easement.

Other Scope Items

1. The Contractor shall provide shop drawings and material samples for the Owner for review and approval.
2. The Contractor shall provide all required testing at no cost to the Owner.
3. The Contractor shall obtain a permit from the Town of South Beach. There will be no permit fee.

3.0 REFERENCE POINTS

The reference points which will be provided by the Owner as mention in Article 4.05 of the General Conditions, will be the staking (or otherwise marking) of the baseline as shown on the Drawings. A benchmark for vertical control will also be provided. All construction staking shall be provided by the Contractor.

4.0 GRADES, DIMENSIONS, AND ELEVATIONS

Grades shown are finished grades. Written dimensions have preference over scaled dimensions. All elevations are based on the North American Vertical Datum of 1988 (N.A.V.D.).

5.0 EXISTING STRUCTURES AND UTILITIES

A. All known utilities have been shown on the Drawings according to the best information available. It is the Contractor's responsibility to contact all owners of structures or utilities above ground, on the surface,

or below the ground, within the Project area so that said owners may stake, otherwise mark, or protect their facilities. The Contractor must provide facilities and be responsible for the protection of all structures, buildings and utilities, underground, on the surface, or above ground against trenching, dewatering, or any other activity connected with the Work throughout the entire Contract Time.

B. When structures and utilities have been properly shown or marked and are disturbed or damaged in the execution of the Work, they must be repaired immediately in conformance with best standard practice and the approval of the owner of the damaged utility or structure. In the case of structures and utilities which have not been properly shown or located as outlined above and are disturbed or damaged in the prosecution of the Work, take whatever steps are necessary for safety and notify the affected utility owner and avoid any actions which might cause further damage to the structure or utility.

C. Should the Work require repairs, changes, or modifications of the Owner's utilities as well as other utilities, it is the responsibility of the Contractor to provide for the maintenance of continuous water, sewage, electric, telephone and other utility services to all present customers of such utilities, unless approval in writing is secured from the applicable utility company or Owner for interruption of such service.

6.0 QUALITY CONTROL

A. Testing Laboratory Services - All tests and analyses, which are called for in the Specifications and/or Drawings to be performed by an Independent Testing Laboratory, will be at the Contractor's expense unless otherwise specified, provided the tests and analyses determine that the material(s) and/or Work meets the requirements as specified. All such tests that pass or fail to meet the Project requirements are to be paid by the Contractor.

B. Field Observations - Provide twenty-four (24) hour notification to the Engineer for all specified field observations, unless otherwise noted.

7.0 MOBILIZATION

A. Consists of the preparatory Work and operations in mobilizing for beginning Work on the Project, including, but not limited to, those operations necessary for the movement of personnel, equipment, supplies and incidentals to the Project site, and for the establishment of temporary offices, buildings, safety equipment and first aid supplies, sanitary and other facilities, as required by these Specifications, and State and local laws and regulations.

The costs of bonds, insurance and any other pre-construction expenses necessary for the start of the Work, excluding the cost of construction materials, is to be included in Mobilization.

B. When the Bid Form includes a separate pay item for Mobilization, partial payments will be made in accordance with the following:

Percent of Contract Price Less Mobilization Earned	Allowable % of the Lump Sum Price of Mobilization
5	25
10	50
50	75
90	100

The standard retainage will be applied to these payments. Previous payments for Mobilization and unpaid amounts on Allowances will not be considered in calculating the percent of the Contract Price earned. Payments will be made in stepped increments as shown and will not be interpolated between steps.

C. When the Bid Form does not include a separate item for Mobilization, all Work and incidental costs specified as being covered under Mobilization is to be included for payment under the several scheduled items on the Bid Form, and no separate payment will be made therefor.

8.0 MAINTENANCE OF TRAFFIC

A. The Contractor's use of streets and highways for the Work to be done under these Specifications, shall conform to all applicable Municipal, County, State and Federal laws and regulations. Provide, erect, and maintain effective barricades, warning lights, and signs on all intercepted streets or highways for protection of the Work and safety of the public. All barricades or obstructions, which encroach on or are adjacent to the public rights of way, should be provided with lights, which are illuminated at all times between sunset and sunrise.

B. Arrange Work to cause minimum disturbance of normal pedestrian and vehicular traffic and be responsible for providing suitable means of access to all public and private properties during all stages of the construction. Other than for an emergency safety condition, the Contractor must contact the Owner and Engineer for approval prior to completely blocking off any street to vehicular traffic during construction.

C. Maintain traffic in accordance with Section 102 of the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, 1991 Edition, except as follows:

1. Contractor is responsible for preparing Maintenance of Traffic plan. Contractor shall submit plan for Owner or roadway authority (City, County, D.O.T.) review only if requested to do so by the Engineer. When required by the roadway authority, the Maintenance of Traffic plan must be prepared by a person who is certified by the State of Florida to prepare such plan.

2. When the Bid Form does not include a separate item for Maintenance of Traffic, the costs are to be included for payment under the several scheduled items on the Bid Form, and no separate payment will be made therefor.

9.0 PLACING EQUIPMENT INTO SERVICE

Do not operate or place into service or energize, electrical and mechanical equipment until approved by the Owner and Engineer. Such approval may be granted only after all interested parties have been duly notified, have given approval for placing the equipment into service, and all interest parties are present or waived their right to be present. Notify the Owner and Engineer as far in advance as possible of the dates that various items and equipment will be completed and ready for start-up.

10.0 SALVAGEABLE MATERIAL

All salvageable material and/or equipment removed from the existing construction for which specific use, relocation or other disposal is not specifically noted on the Drawings or otherwise specified, will remain the property of the Owner and be turned over to him. All material and/or equipment not in salvageable condition as determined by the Engineer must be disposed of by the Contractor. The actual storage site for salvageable material will be designated by the Owner.

11.0 BORING LOGS, OTHER REPORTS AND DRAWINGS UTILIZED BY ENGINEER

Boring Logs, other reports, and Drawings utilized by Engineer, if attached at the end of these Specifications, are provided for Contractor's information in accordance with paragraph 4 of the Instructions to Bidders and are not a part of the Contract Documents. There is no technical data in the Boring Logs, other reports or Drawings that should be relied on by the Contractor. There also were no other reports or drawings utilized

by Engineer in preparation of the Contract Documents that contained data that could be relied on by the Contractor.

12.0 DISPOSAL OF EXCAVATED MATERIALS AND DEBRIS

All excess excavated material and debris not required for backfill (unless otherwise noted), broken pipe, sidewalks, curbs and other concrete items, together with all roots, boards and other debris are to be disposed of by the Contractor at an appropriate legal site.

13.0 PROTECTION AND RESTORATION OF SURVEY MONUMENTS

The Contractor shall be responsible for protecting and restoring all land and property corners, such as section corners, ¼ section corners, property corners or block control points, and for maintaining all horizontal and vertical control points. All surveying work shall be the responsibility of the Contractor and shall be performed under the supervision of a Florida Registered Land Surveyor. Survey points that will be destroyed during construction shall be properly referenced and replaced at the Contractor's expense with permanent monuments approved by the Engineer.

14.0 EQUIPMENT

All construction equipment necessary and required for the proper construction of this project shall be on the construction site, in first-class working condition, and shall have been approved by the Engineer before construction is permitted to start. The Contractor shall provide such tamping tools and equipment as are necessary for the proper compaction of the backfill.

15.0 STORAGE SITES

The contractor shall furnish, at his expense, properly zoned areas suitable for field offices, material storage and equipment service, and storage. The Contractor shall maintain these areas in a clean, orderly condition so as not to cause a nuisance in the area. The Contractor shall restore the storage area to its original or better condition, with all its appurtenances, in kind, to the satisfaction of the Engineer.

16.0 LABORATORY TESTS

A. Except as otherwise provided, sampling and testing of all materials, and the laboratory methods and testing equipment required under these specifications shall be in accordance with the latest standards or tentative of the American Society for Testing Materials or the latest standards or methods of the American Association of State Highway and Transportation Officials (AASHTO).

B. The testing of samples and materials shall be made at the expense of the Contractor, except where indicated otherwise. The Contractor shall furnish the required samples without charge. The Contractor shall give sufficient notification of the placing of orders for materials to permit testing. In locations where corings are taken by the approved testing lab, the Contractor shall be responsible for plugging these core holes.

C. All material tests will be made by an independent testing laboratory to be selected by the Owner (refer to Supplementary Conditions). Where tests indicate that materials and/or construction quality are in accordance with specified requirements, the Contractor shall bear the testing cost. When tests reveal that conditions or materials do not comply with the specifications, the cost of such tests shall be assessed against the Contractor.

17.0 MEASUREMENT AND PAYMENT

Payment shall be made at the Contract Unit Price or Lump Sum Prices as outlined hereafter. These prices shall be full compensation for all costs associated with completion of all the work in full conformity with the requirements as stated, shown, or both by the Plans and Specifications. The cost of any item(s) of work, which is not by a definite Contract Unit Price or Lump Sum Price, shall be included in the Contract Unit Price or Lump Sum Price to which the item(s) is most applicable.

END OF SECTION

CONFLICT OF INTEREST STATEMENT

This Invitation to Bid is subject to the conflict of interest provisions of the Palm Beach County Code of Ethics, and the Florida Statutes. The Bidder shall disclose to the Town of South Palm Beach any possible conflicts of interests. The Bidder's duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of the Town of South Palm Beach.

CHECK ALL THAT APPLY.

To the best of our knowledge, the undersigned business has no potential conflict of interest for this Bid due to any other clients, contracts, or property interests.

To the best of our knowledge, the undersigned business has no potential conflict of interest for this Bid as set forth in the Palm Beach County Code of Ethics, as amended from time to time.

To the best of our knowledge, the undersigned business has no potential conflict of interest for this Bid as set forth in Chapter 112, Part III, Florida Statutes, as amended from time to time.

IF ANY OF THE ABOVE STATEMENTS WERE NOT CHECKED, the undersigned business, by attachment to this form, shall submit information which may be a potential conflict of interest due to any of the above listed reasons or otherwise.

THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THE FAILURE TO CHECK THE APPROPRIATE BLOCKS ABOVE OR TO ATTACH THE DOCUMENTATION OF ANY POSSIBLE CONFLICTS OF INTEREST MAY RESULT IN DISQUALIFICATION OF YOUR BID OR IN THE IMMEDIATE CANCELLATION OF YOUR AGREEMENT, IF ONE IS ENTERED INTO.

COMPANY OR INDIVIDUAL NAME

AUTHORIZED SIGNATURE

NAME (PRINT OR TYPE)

TITLE, IF A COMPANY

END OF SECTION

ACKNOWLEDGEMENT OF CONFORMANCE
WITH O.S.H.A. STANDARDS

TO TOWN OF SOUTH PALM BEACH:

We, _____, hereby acknowledge and
(Prime Contractor)

agree that as CONTRACTORS for the PURCHASE AND INSTALLATION OF SOLAR LIGHTING project, as specified, have the sole responsibility for compliance with all the requirements of the Federal Occupational Safety and Health Act of 1970, and all State and local safety and health regulations, and agree to indemnify and hold harmless the **Town of South Palm Beach** and **Jupiter Civil Engineering Company, LLC**, against any and all liability, claims, damages, losses and expenses they may incur due to the failure of

(Subcontractor's Names)

to comply with such act or regulation.

CONTRACTOR

ATTEST

BY: _____

ATTEST

DATE

END OF SECTION

SCRUTINIZED COMPANIES CERTIFICATION FORM

By execution below, I, _____, on behalf of _____
(hereinafter, the "Contractor"), hereby swear or affirm to the following certifications:

The following certifications apply to all procurements:

1. The Contractor has reviewed section 215.4725, Florida Statutes, section 215.473, Florida Statutes and section 287.135, Florida Statutes, and understands the same.
2. The Contractor is not on the Scrutinized Companies that Boycott Israel List nor is the Contractor engaged in a boycott of Israel.
3. If awarded a contract, the Contractor agrees to require these certifications for applicable subcontracts entered into for the performance of work/services under this procurement.
4. If awarded a contract, the Contractor agrees that the certifications in this section shall be effective and relied upon by the Town for the entire term of the contract, including any and all renewals.

If the contract awarded hereunder is for one million dollars or more, the following additional certifications apply:

1. The Contractor is not on the Scrutinized Companies with Activities in Sudan List.
2. The Contractor is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
3. The Contractor is not engaged in business operations in Cuba or Syria.
5. If awarded a contract, the Contractor agrees to require these certifications for applicable subcontracts entered into for the performance of work/services under this procurement.
6. If awarded a contract, the Contractor agrees that the certifications in this section shall be effective and relied upon by the Town for the entire term of the contract, including any and all renewals.

CONTRACTOR:

By: _____
 Name: _____
 Title: _____
 Date: _____

STATE OF FLORIDA
 COUNTY OF _____

The foregoing instrument was sworn to (or affirmed) and subscribed before this _____ day of _____, 20____, by _____, who is the _____ of _____, who is personally known to me or who has produced _____ as identification.

NOTARY PUBLIC
 Printed Name of Notary _____
 My Commission expires: _____

NOTICE OF AWARD

TO: _____

DATE: _____

Project No.: _____

PROJECT DESCRIPTION: TOWN OF SOUTH PALM BEACH – PURCHASE AND INSTALLATION OF SOLAR LIGHTING in accordance with PLANS and CONTRACT DOCUMENTS as prepared by **JUPITER CIVIL ENGINEERING COMPANY, LLC.**

The **TOWN OF SOUTH PALM BEACH** (Owner) has considered the BID submitted by you for the above described WORK in response to its ADVERTISEMENT FOR BIDS and INSTRUCTIONS TO BIDDERS.

You are hereby notified that your BID has been accepted for the construction of in the amount of \$ _____

You are required by the INSTRUCTIONS TO BIDDERS to execute the AGREEMENT and furnish the required CONTRACTOR'S PERFORMANCE BOND, PAYMENT BOND and certificates of insurance within seven (15) days from the date of this NOTICE to you.

If you fail to execute said AGREEMENT and to furnish said BONDS within seven (15) days from the date of this NOTICE, said Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the Owner.

Dated this _____ day of _____, **2021**.

Town of South Palm Beach, the Owner

BY: _____

TITLE: _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by

This _____ day of _____, 2021

BY: _____

TITLE: _____

END OF SECTION

NOTICE TO PROCEED

TO: _____ DATE: _____

PROJECT DESCRIPTION: TOWN OF SOUTH PALM BEACH – PURCHASE AND INSTALLATION OF SOLAR LIGHTING in accordance with PLANS and CONTRACT DOCUMENTS as prepared by **JUPITER CIVIL ENGINEERING COMPANY, LLC.**

You are hereby notified to commence WORK in accordance with the AGREEMENT dated _____, on or before _____, and you are to complete the WORK within ____ calendar days thereafter. The date of completion of all WORK is therefore _____.

BY: _____

TITLE: _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED

is hereby acknowledged by _____

_____ day of _____ 2021

BY: _____

TITLE: _____

END OF SECTION

SPECIAL CONDITIONS AND SUPPLEMENTARY CONDITIONS

PROJECT REPRESENTATIVE is as follows:

Joseph M. Kusnir, Jr., P.E.
Jupiter Civil Engineering Company, LLC

SPECIAL CONDITIONS

1. **Normal work hours for this project are 8:00 a.m. to 5:00 p.m. Monday through Friday. Any work done outside these hours shall require permission from the OWNER.**
2. **All work done by the CONTRACTOR or any subcontractor shall be done with minimal disturbance to the existing operating facilities.**
3. **The OWNER and/or ENGINEER shall be present during all necessary testing. The CONTRACTOR shall pay for the cost of any required test.**
4. **It is the sole responsibility of the CONTRACTOR to confirm and verify the accuracy of horizontal and vertical controls prior to commencement of construction. The CONTRACTOR shall not be allowed additional payments on the basis of incorrect horizontal and vertical control.**
5. **The final location of bollards shall be confirmed by Owner prior to installation.**

END OF SECTION

PERMITS

PART 1 GENERAL

1.01 SUMMARY

- A. The Owner has applied and will obtain a permit for the **TOWN OF SOUTH PALM BEACH – PURCHASE AND INSTALLATION OF SOLAR LIGHTING** from the following agency. The contractor shall provide all necessary data and information to the agency as may be required.
 - 1. Florida Department of Transportation (FDOT).
- B. Prior to beginning work contact the Sunshine/One-Call utility mark out agency. Obtain from Sunshine a number and immediately report same to the Engineer and if within an FDOT right-of-way, to FDOT.
- C. Contractor shall obtain a Maintenance of Traffic Permit from the FDOT.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

END OF SECTION

CHANGE ORDER

DATE OF ISSUANCE: -

No. #

**PROJECT: TOWN OF SOUTH PALM BEACH -
PURCHASE AND INSTALLATION OF SOLAR LIGHTING**

**OWNER: TOWN OF SOUTH PALM BEACH
3577 S. OCEAN BLVD.
SOUTH PALM BEACH, FL 33480**

CONTRACTOR:

PROJECT REPRESENTATIVE: **JUPITER CIVIL ENGINEERING COMPANY, LLC**

CONTRACT FOR:

YOU ARE DIRECTED TO MAKE THE FOLLOWING CHANGES IN THE CONTRACT DOCUMENTS.

DESCRIPTION:

ATTACHMENTS:

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIME:
Original Contract Price \$	Original Contract Time Days
Previous Change Orders	Net change from previous Change Orders
Contract Price prior to this Change Order \$	Contract Time prior to this Change Order Days
Net increase/decrease of this Change Order \$	Net Increase/decrease of this Change Order Days
Contract Price with all approved Change Orders \$	Contract Time with all approved Change Orders Days

RECOMMENDED :

By _____
JOSEPH M. KUSNIR, PROJECT REPRESENTATIVE

ACCEPTED :

By _____
CONTRACTOR

APPROVED :

By _____
OWNER

END OF SECTION

BID SPECIFICATIONS BOLLARD LIGHTING

The Town of South Palm Beach is seeking bids for the installation of complete working LED solar illumination bollard as part of a sidewalk feature for Pedestrian Lighting.

Bollards shall be cast, low cooper aluminum housing with extruded low copper aluminum post attached to a baseplate with stainless steel fasteners on a concrete mounting base. Architectural grade, super durable TGIC powder coating shall be the color bronze. Due to manufactures' variations, contractors must submit drawings as part of the bid submittal. Bollard shall be a minimum of 35 inches from the base to the top of the bollard. Bollards shall be installed in accordance to manufactures' specifications on concrete foundations.

Battery shall be high-performance Lithium with a 10-year life and be high temperature tolerant. Battery shall be concealed in post and designed for easy changing when needed. Batteries shall be located in bollards at least 24 inches above ground.

Solar module shall be UV resistant, high-efficiency, mono-crystalline cells fully integrated into bollard housing. Solar Lighting Controller shall be high efficiency Maximum Power Point Tracking charger controller and include high efficiency LED driver incorporated into bollard housing.

LED Lights shall be high output Cree LED with a minimum 100,000 L70 lifetime and carry at least a 5-year warranty. Light color shall be amber in color with back light shield. Contractor shall provide manufactures' photometrics and lighting pattern as part of bid submittal.

Factory settings shall include, on at dusk, out at dawn, on at dusk, off after 6 hours. On at dusk, dim to 30% after 6 hours. On at dusk, off after 5 hours, on 1 hour before dawn.

Bollards shall be First Light Technologies Solar Powered LED Bollards, PLB Amber Series. No other substitutes or "or-equals" will be considered.

Lighting shall be installed in accordance with Pathway Lighting Plans. However, additional lights (41 in total) are being purchased to allow for field adjustments to location of each light during installation. In addition, 4 additional lights (45 in total) are to be installed on pathway to Town Hall behind the building. Successful Bidder shall provide Maintenance of Traffic Plan prior to beginning project.