

RESOLUTION NO. 58-10-06

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH BELLINGHAM MARINE FOR THE REPAIR OF THE FLOATING DOCK AT LAKE PARK HARBOR MARINA AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the Town wishes to repair the floating dock at Lake Park Harbor Marina that was damaged during Hurricane Wilma in 2005 and enter into a repair agreement with Bellingham Marine, said agreement attached hereto and incorporated herein as **Exhibit "A"**; and

WHEREAS, the Town realizes that it is in the best interests of the Town for the safety and well-being of patrons and visitors to Lake Park Harbor Marina.

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

SECTION 1.

The whereas clauses are hereby incorporated as true and correct as the findings of fact and conclusions of law of the Town Commission.

SECTION 2.

That Mayor is hereby authorized and directed to execute the agreement with Bellingham Marine for the repair of the floating dock at Lake Park Harbor Marina which is attached hereto as **Exhibit "A"**.

SECTION 3.


This Resolution shall take effect immediately upon its adoption.

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

	AYE	NAY
MAYOR PAUL W. CASTRO	<u> X </u>	<u> </u>
VICE-MAYOR ED DALY	<u> X </u>	<u> </u>
COMMISSIONER CHUCK BALIUS	<u> X </u>	<u> </u>
COMMISSIONER JEFF CAREY	<u> X </u>	<u> </u>
COMMISSIONER PATRICIA OSTERMAN	<u> X </u>	<u> </u>

The Town Commission thereupon declared the foregoing Resolution NO. 58-10-06 duly passed and adopted this 15 day of November, 2006.

TOWN OF LAKE PARK, FLORIDA

BY: 
PAUL W. CASTRO
MAYOR


ATTEST:


Vivian Mendez
TOWN CLERK



FLORIDA

Approved as to form and legal sufficiency:

BY: 
THOMAS J. BAIRD
TOWN ATTORNEY



INNOVATIVE HARBOR AND WATERFRONT SOLUTIONS

August 31, 2006

Mr. David P. Hinaman, Marina Manager
Lake Park Harbor Marina
105 Lake Shore Drive
Lake Park, FL 33403

Reference: Wave Attenuator Repair Estimate

Dear Dave:

Thank you for the opportunity to present our quotation for the manufacture, delivery and installation of our Unifloat® concrete floating dock system for the hurricane repair work at the Lake Park Harbor Marina in Lake Park, Florida. The purpose of this written proposal is to present our offer to perform the work identified in this project.

Our quoted price is: Nineteen Thousand Four Hundred Thirty Five Dollars (\$19,435.00).

F.O.B.: Lake Park, Florida

1. The following items are included in our proposal:

- 1.1 SLIP-RESISTANT POLYMER FILLER SLABS – includes 1 sheet of material to replace walkway sections as necessary to provide a continuous deck surface.
- 1.2 FABRICATED, TREATED (CCA) WOOD WALER SYSTEM - all walers to be Southern Yellow Pine, No. 1. Includes replacement of 40' of 3" x 12" cover boards and 40' of 3" x 6" cover boards.
- 1.3 GALVANIZED STEEL WELDMENTS – includes replacement of 1 each 18" finger end pile guide with break away pile guide and 2 each I beam connection members for the walkway.

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1.4 GALVANIZED STEEL HARDWARE – includes:

- 90 each 12'-0½" thru-rods with nuts and washers
- 24 each ½" x 2½" machine bolts with nuts and washers
- 8 each ¾" x 13½" machine bolts with nuts and washers

The attenuator section will have additional rods added to it as well as replacement of the existing beam sections. The existing finger pier will be reconnected and leveled.

1.5 FLOATATION TUBS – includes 3 each polyethylene tubs for leveling the attenuator dock.

1.6 TIGHTEN AND LEVEL THE ATTENUATOR DOCK SECTION.

1.7 PATCH CHIPPED WALKWAY SECTIONS ON THE ATTENUATOR DOCK SECTION.

1.8 LOADING AND SECURING ON OUR TRUCKS WITH FREIGHT PREPAID TO LAKE PARK, FLORIDA.

1.9 SUBASSEMBLED LENGTHS CONVENIENT FOR SHIPPING.

1.10 ASSEMBLY AND INSTALLATION OF CONCRETE UNIFLOATS® INCLUDING:

- | | |
|-----------------|-------------------------|
| 1. Walers | 4. Weldments |
| 2. Cleats | 5. Polymer filler slabs |
| 3. Cover boards | 6. Fendering |

1.11 SALES TAX.

2. All items and quantities not specifically included in Section 1 above are *specifically excluded from this proposal*. Excluded items include, but are not limited to, the following:

2.1 PILING OR PILE DRIVING REMOVAL OR REPAIRS.

2.2 UTILITY SYSTEM REMOVAL OR REPAIRS.

2.3 PAYMENT AND PERFORMANCE BONDS.

2.4 SIGNED OR SEALED SHOP DRAWINGS OR CALCULATIONS.

2.5 PERMITS AND LICENSES.

2.6 BUILDERS RISK INSURANCE.

3. Other provisions:

3.1 CONCEALED OR UNKNOWN CONDITIONS: In preparing this proposal, BMI has assumed there are no concealed conditions (subsurface or otherwise) or unknown physical conditions which will adversely impact BMI's performance of the work. If such conditions are encountered, BMI will be entitled to an adjustment in the contract amount, time for completion, or both.

3.2 SITE ACCESS: All loading and offloading is to be accomplished at the site in a mutually agreed upon location adjacent to the harbor and furnished at no cost by Buyer. An additional onsite area will be furnished under the same conditions for a storage container, parking and a small office trailer.

3.3 SCHEDULE: Project completion will occur within 8 weeks after receipt of notice to proceed based on our current production schedule and subject to the general conditions of BMI's standard agreement for construction. Production of concrete Unifloats® cannot commence prior to receipt of approved shop drawings.

The installation of this project is scheduled during a period when named wind storms may occur. BMI and Buyer agree that to avoid the unnecessary risk of incurring project damage, BMI shall have the right to delay construction if unfavorable weather patterns exist. In such an event, the Project Schedule will be adjusted to compensate for the delay incurred.

3.7 INCLEMENT WEATHER PREPAREDNESS: Buyer agrees to designate a representative for emergency contact should unfavorable weather patterns develop during construction. BMI and Buyer shall mutually agree upon a plan for securing the site and BMI shall be reimbursed actual costs incurred in carrying out the plan.

3.8 PRICE VALIDITY: Prices are valid for firm orders placed within a period of thirty (30) days after quotation and are subject to reconfirmation thereafter.

3.9 PAYMENT TERMS: Net cash ten (10) days from receipt of invoice and in accordance with BMI's standard agreement. Method of payment to be approved by BMI's credit department prior to start of production. Interest will be charged on past due accounts at 18% per annum, or at the highest non-usurious commercial rate allowable by

state law or provided by state statute, whichever is less. If BMI is required to employ an attorney to collect any amount due as a result of the default of Buyer, the Buyer shall pay all costs of collection, including reasonable attorney's fees and court costs.

Prior to commencement of project, Buyer shall provide evidence of financing satisfactory to BMI.

- 3.10 **ENGINEERING/CODES/RESPONSIBILITY:** BMI does not warrant any components to meet specific local planning, environmental, or architectural ordinances or codes. It is the responsibility of the Buyer to secure necessary governmental approvals of the engineering or design incorporated into the Unifloat® system.
- 3.11 **BACKCHARGES:** Backcharges for corrective work performed by Buyer or his representative will not be honored without BMI's prior written acceptance. BMI at all times retains the right to perform corrective work on his own behalf.
- 3.12 **WARRANTY:** BMI warrants that the individual dock components (including, but not limited to, walers, weldments, filler slabs, hardware, and fiberglass components) will be free of defects in materials and workmanship for a period of one (1) year from the date of shipment. If within the warranty period the materials are found to be defective, the Buyer must provide written notice of such defects within ten (10) days from the date the defects are discovered. Buyer's remedy for defective materials is limited to the repair or replacement of the defective item by BMI. BMI is not liable for consequential or incidental damages resulting from the breach of this warranty.

The Unifloat® system is intended for protected installations such as exist behind a permanent, fixed breakwater or floating concrete wave attenuator furnished by BMI. BMI's warranty excludes coverage for any loss, liability, damage or defect caused by abuse, misuse, accident, neglect, improper or insufficient maintenance, or to any equipment or products which have been repaired or altered by any person not authorized by BMI.

The foregoing warranty is the exclusive and sole warranty offered to Buyer. **SUCH WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY DISCLAIMED.**

- 3.13 INDEMNIFICATION: The Buyer shall assume all liability, including but not limited to liability for injury to person or property, economic loss, and business interruption, for claims arising from the actual use of any equipment, products, or materials furnished by BMI, and agrees to indemnify and hold harmless BMI from any and all claims, demands, actions, or suits arising from the use of such products, materials, or equipment, including reasonable attorney's fees and costs.

Notwithstanding anything herein to the contrary, BMI's cumulative liability to Buyer will under no circumstances exceed the total amount paid to BMI. In any case BMI WILL NOT BE RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR FOR LOSS, DAMAGES, OR EXPENSE DIRECTLY, OR INDIRECTLY, ARISING FROM THE USE OF ANY PRODUCTS OR ANY INABILITY TO USE THEM, EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER EQUIPMENT OR MATERIAL OR FROM ANY OTHER CAUSE.

- 3.14 NON-UNION CONTRACTOR: Seller is a non-union contractor and its quotation is expressly conditioned on Buyer's agreement that Seller will not be required to become signatory to any union agreement in connection with the project. Language to the contrary in any purchase order or subcontract will not be accepted by Seller.
- 3.15 CAUTION: Float systems are unstable when placed in water prior to assembly in their final intended configuration. Modules or subassemblies should be handled with care during installation and should never be stood or walked upon prior to finished assembly.
- 3.16 WARNING: BMI has been notified by its wood preservers that the chemicals used in the wood treatment process are known to cause cancer.
- 3.17 DISPUTES: Buyer hereby agrees that BMI, at its sole discretion, may refer any or all controversies, disputes, or claims of whatever nature arising out of, in connection with, or in relation to the interpretation, from performance or breach of this Proposal, including any claim based on contract, tort, or statute to final and binding arbitration administered by and in accordance with the then existing Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon any award rendered by the Arbitrator(s) may be entered by any state or federal court having jurisdiction thereof. Any dispute not referred to arbitration by BMI shall be resolved in a court of competent jurisdiction in the venue agreed to herein. The presiding judge or arbitrator shall determine which is the prevailing party and

Mr. David Hinaman
August 31, 2006

shall include in the award that party's reasonable attorneys' fees and costs.

- 3.18 VENUE AND CHOICE OF LAWS: For all disputes arising from this Proposal, whether decided by the court or through arbitration, venue shall be in the state and county where BMI's goods were intended to be delivered and installed. The laws of the forum state, including that state's choice of law rules, shall apply to all proceedings.
- 3.19 CONTRACT DOCUMENTS: The Contract Documents, in addition to this proposal, will include BMI's standard agreement for construction.

In the event Buyer's acceptance of this proposal includes terms additional to or different from this proposal, Buyer's acceptance is nevertheless effective, and the terms of this proposal control. Notification of objection to all such additional or different terms is hereby given.

We hope this proposal contains sufficient detail to permit your fullest evaluation. Please feel free to contact us at any time for further information.

Sincerely,

Steve Ryder

Manager of Project Development
Florida Floats, Inc.
dba Bellingham Marine

Florida State Contractor's License #CGC 059769
Approved: ____

SR:sr:Lake Park Marina Repair 083106.doc

CONTRACT BETWEEN THE
OWNER OF LAKE PARK
AND
CONTRACTOR

THIS CONTRACT, made this _____ day of _____, 2006, by and between the Town of Lake Park, a municipal corporation of the State of Florida, hereinafter designated as the "OWNER", and Florida Floats, Inc d/b/a Bellingham Marine, 1813 Dennis Street Jacksonville, FL 32204 FEID Number: 59-1230548, hereinafter designated as the "CONTRACTOR".

WITNESSETH THAT:

WHEREAS, the OWNER is a municipality with those powers and responsibilities enumerated by Chapter 166 Florida Statutes and the Florida Constitution; and

WHEREAS, the OWNER is empowered to enter into contractual arrangements with public agencies, private corporations or other persons, pursuant to Florida Statutes; and

WHEREAS, the OWNER has previously determined that it is in need for the provision of construction services at the Lake Park Harbor Marina; and

WHEREAS, the OWNER has solicited and received a proposals on August 31, 2006 for the repair and re-construction of floating docks at the Marina; and

WHEREAS, the CONTRACTOR has submitted a Proposal in response to the OWNER'S solicitation and the CONTRACTOR has represented that it is qualified, able and willing to satisfactorily provide said services; and

WHEREAS, the OWNER has found the CONTRACTOR'S Proposal to be acceptable and the parties wish to enter into a CONTRACT; and

WHEREAS, the OWNER has budgeted funds in its current fiscal year budget which are available for the funding of this CONTRACT;

NOW, THEREFORE, the OWNER and the CONTRACTOR in consideration of the benefits flowing from each to the other do hereby agree as follows:

Article 1
Statement of Work

- 1.1 The Contractor shall furnish all equipment, tools, labor, and other necessary items for the performance of the work, and shall perform the required work in accordance with the Contract Documents. This Work is generally described as follows:

In accordance with the terms of the Proposal of Bellingham Marine dated August 31, 2006, attached hereto and incorporated herein ("Proposal") the Contractor will manufacture, deliver and install the repair materials listed in the Proposal. Any terms or provisions contained in the Proposal which conflict with any term or provision of this Contract shall be null and void and of no force or effect.

Article 2
Date of Commencement and Substantial Completion

- 2.1 The Effective Date of this Agreement is the date on which the Contract is executed by the Mayor of the Town of Lake Park. The Date of Commencement shall be the date on which the Owner issues a Notice to Proceed to the Contractor.
- 2.2 The Contractor shall achieve Substantial Completion of the entire Work, with Substantial Completion of the work to be determined by the Owner in its sole discretion, not later than December 31, 2006, subject to adjustments of this Contract Time as provided in the Contract Documents.
- 2.3 The parties agree that the TIME IS OF THE ESSENCE, in the performance of each and every obligation under this Contract. The Contract may be changed only by a change order or written amendment.
- 2.4 There shall be no damages allowed for Contract delay. No claims for damages or any claim other than an extension of time shall be made or asserted against the Owner by reason of any delays, regardless of the cause of the delay.
- 2.5 Failure to complete the Project within the time fixed in this Contract will result in substantial injury to the Owner. As damages arising from such failure cannot be calculated with any degree of certainty, it is hereby agreed that if the project is not completed with the time fixed or within such further time, if any, as may be authorized in accordance with the Contract Documents, the Contractor shall pay to the Owner as Liquidated Damages for such delay, and not as a penalty, Two Hundred Fifty and 00/100 Dollars (\$250.00), for each and every calendar day elapsing between the date fixed for completion and the date such completion shall have actually occurred.
- 2.6 This provision of Liquidated Damages for delay shall in no way affect the Owner's right to terminate the Contract. The Owner's exercise of the right to terminate shall not release the Contractor from his obligation to pay Liquidated Damages. It is further agreed that the Owner may deduct from the balance of the Contract sum held by the Owner the Liquidated Damages stipulated herein or such portions as said balance will cover.

Article 3 Contract Sum

- 3.1 The owner shall pay the Contractor in U.S. funds for the Contractor's performance of the Contract the Contract Sum of Nineteen Thousand Four Hundred Thirty Five Dollars (\$19,435.00), subject to additions and deductions as provided in Change Orders authorized by the Owner.
- 3.2 The aggregate Contract price, as stated above, includes the specific indemnification consideration required under Section 725.06, Florida Statutes. By including such specific consideration in addition to other good and valuable considerations, paid by the Town, the receipt of which is acknowledged by the Contractor, the parties agree that they have complied with the requirements of Section 725.06, Florida Statutes, if applicable, for the indemnification agreement in Article 8 of this Contract.
- 3.3 Pursuant to Section 287.055(5)(a), Florida Statutes, the signature on this Contract by an authorized agent of the Contractor, serves as the execution of a truth-in-negotiation certificate, stating that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The Contractor agrees that the Owner may adjust the consideration of this Contract to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other actual unit costs. The Owner may make any such adjustment within the term of this Contract.

Article 4 Progress Payments

- 4.1 If satisfactory progress is being made, the Contractor may request partial payments on monthly estimates, based on the actual work done or completed, which request may be approved and paid by the Owner. The Contractor shall provide a waiver of liens in the standard form attached to this Contract prior to the Owner making final payment for the work.
- 4.2 The Contractor warrants that title to all work covered by the application for payment will pass to the Town upon payment. The Contractor further warrants that upon submittal of an application for payment, all work for which certificates for payment have been previously issued and payments received from the Town, shall be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, subcontractors, material suppliers, and other persons or entities making a claim by reason of having provided labor, material, and equipment relating to the work.
- 4.3 The failure to submit requests for partial payment with the required disbursement certification, in the manner required by this Paragraph, may result in non-payment and/or a delay in the payment of the requested partial payment, until the required, fully completed forms and all necessary information are provided to the Owner. The Owner shall have no legal liability for direct or consequential damages alleged to have been sustained by the Contractor, and/or any other claims, losses and liabilities, interest, penalties, attorney and other professional fees, costs or expenses, of any kind, which may be incurred as a result of the late payment or non-payment of any payment request which failed to comply with the requirements of this Paragraph.

Article 5 Final Payment

- 5.1 When the Contractor has reached substantial completion, as defined herein, the Owner will schedule an inspection of the project with the Contractor. The purpose of this inspection will be to develop a final list of incomplete or deficient work, and the necessary completion of which will render complete, satisfactory, and acceptable the construction services purchased by the Owner. This list of incomplete or deficient work is herein after referred to as "punch list work." The Contractor shall schedule the attendance of any required representatives of subcontractors or suppliers providing materials and services on the Project. The failure to include any corrective work or pending items not yet completed on the punch list does not alter the responsibility of the Contractor to complete all of the construction services pursuant to the Contract. All items that require correction under the Contract and that are identified after the preparation of the punch list remain the obligation of the Contractor as defined by the Contract.
- 5.1.1 Substantial Completion: The point in the project where the Contractor has completed 95% of the contract as a percentage of the original contract including the value of any approved supplemental agreements, and with the exception of punch list work, the project is ready for the Owner's occupancy and use.
- 5.1.2 For this Contract, the punch list will be completed within 7 calendar days of substantial completion.
- 5.1.3 In the event the Contractor fails to attend to the scheduled punch list inspection, the Engineer will continue the scheduled inspection and develop the punch list. The Contractor will be provided a copy of the punch list at the address provided for written notice.
- 5.1.4 The determination by the Owner as to the items identified in the punch list shall be conclusive and shall not be subject to challenge by the Contractor in any forum, except upon the Contractor establishing by clear and convincing proof that the determination by the Owner was without any reasonable and good faith basis.
- 5.1.5 When, upon completion of the final construction inspection of the entire Project, the Owner determines that the Contractor has satisfactorily completed the work and all punch list work identified during the punch list inspection, the Owner will give the Contractor written notice of final acceptance. The final acceptance date will be the date that which warranty provisions and the time limitations for latent defects commence.

Article 6 Warranties of Contractor

- 6.1 Contractor warrants that the individual dock components (including, but not limited to, walers, weldments, filler slabs, hardware, and fiberglass components) will be free of defects in materials and workmanship for a period of one (1) year from the date of final acceptance by the Owner.

- 6.2 Damage resulting from exposure of the Unifloat® system to conditions above the original Lake Park Harbor Marina's Design Criteria is specifically excluded from this warranty. Contractor's warranty excludes coverage for any loss, liability, damage or defect caused by abuse, misuse, accident, neglect, improper or insufficient maintenance, or to any equipment or products which have been repaired or altered by any person not authorized by Contractor.
- 6.3 The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new and that all work will be of good quality free from faults and defects and is in conformance with the Contract. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of the materials and equipment. All work, equipment and materials furnished as part of the Contract shall be warranted for a minimum of one year. Warranty periods shall begin at the date of final written acceptance of the Project by the Owner. If any work, materials or equipment is determined to not be in conformance with the Contract requirements during this warranty period, or is otherwise found to be defective, such items shall be corrected or replaced, at Contractor's expense.
- 6.4 **WARRANTY OF TITLE:** The Contractor warrants to the Owner that all goods and materials furnished under the Contract will be new unless otherwise specified, and that Contractor possess good, clear, and marketable title to said goods and there are no pending liens, claims or encumbrances whatsoever against said goods. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.
- 6.5 **WARRANTY OF SPECIFICATIONS:** The Contractor warrants that all goods, materials and workmanship furnished, whether furnished by the Contractor or its sub-contractors and suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted.
- 6.6 **Warranty of Material and Workmanship:** The Contractor warrants all material and workmanship for a minimum of one (1) year from date of completion and acceptance by the Owner. If within one (1) year after acceptance by the Owner, or within such larger period of time as may be prescribed by law, any of the work is found to be defective or not in accordance with the Contract Documents, the Contractor shall, after receipt of a written notice from the Owner to do so, promptly correct the work unless the Owner has previously given the Contractor a written acceptance of such condition.
- 6.7 The Contractor warrants to the Owner that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under the Contract. The Contractor warrants to the Owner that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind, which would have an adverse effect on its ability to perform its obligations under the Contract.
- 6.8 The Contractor warrants to the Owner that the consummation of the work provided for in the Contract Documents will not result in the breach of any term of provision of, or constitute a default under any indenture, mortgage, contract, or agreement to which the Contractor is a party.

Article 7 Insurance Requirements

- 7.1 The Contractor shall maintain, or cause to be maintained, the following specified insurance coverages in the amounts set forth hereafter during the full period of the Contract which must include the following coverage's and minimum limits of liability:
- 7.1.1 **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE** for all employees of the Contractor for Statutory Limits in compliance with the applicable state and federal laws. Notwithstanding the number of employees or any other statutory provisions to the contrary, coverage shall extend to all employees of the Contractor and all subcontractors.
 - 7.1.2 **COMPREHENSIVE GENERAL LIABILITY** with the minimum limits of \$1,000,000.00, Per Occurrence, Combined Single Limit for Bodily Injury Liability, Property Damage Liability, Premises and Operations, Independent contractors, Products and Completed Operations, Broad Form Property / Personal Injury, XCU coverage, and a contractual Liability Endorsement.
 - 7.1.3 **BUSINESS AUTO LIABILITY** with minimum limits of \$1,000,000.00, Per Occurrence, Combined Single Limit for Bodily Injury and Property Damage Liability. This shall be an "any-auto" policy including Owned, Hired, Non-Owned, and Employee Non-Ownership Coverage.
- 7.2 The Owner shall be included as an Additional Named Insured under the General Liability and Automobile Liability policies. Current valid insurance policies meeting the requirements herein identified shall be maintained during the duration of the Contract. There shall be a thirty (30) day notification to the Owner, in the event of cancellation or modification of any stipulated insurance policy. It shall be the responsibility of the Contractor to ensure that all subcontractors are adequately insured or covered under their policies.
- 7.3 All Certificates of Insurance shall be kept on file with the Owner, and approved by the Owner prior to the commencement of any work activities. The Owner may at its discretion, require the Contractor to provide a complete certified copy of the insurance policy(s). The insurance shall include an endorsement covering transit of the contract materials.
- 7.4 The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the State of Florida with the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide: Financial Stability: B+ to A+.
- 7.5 All required insurance shall preclude any underwriter's rights of recovery or subrogation against the Owner with the express intention of the parties being that the required coverages protect both parties as the primary insurance for any and all losses covered by the above described insurance.
- 7.6 Violation of the terms of this Article 7 and its sub-parts shall constitute a material breach of the Contract by the Contractor and the Owner, at its sole discretion, may cancel the Contract and all rights, title and interest of the Contractor shall thereupon cease and terminate.

Article 8 Indemnification

- 8.1 For \$100.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged as part of the first payment for services, the Contractor shall indemnify, defend, and save harmless the Owner, its elected officials, agents, guests, invitees and employees, from all suits, actions, claims, demands, damages, losses, expenses, including attorney's fees, costs and judgments of every kind and description to which the Owner, its agents, guests, invitees, or employees may be subjected by reason of personal injury, bodily injury including death, or property damage, resulting from or growing out of any intentional, negligent, reckless, or careless act of commission, omission, or consequential damage directly or indirectly connected with the Contractor, its subcontractors, its agents, or employees, and committed in connection with this Contract, Contractor's performance hereof, or any work performed hereunder.
- 8.2. The Contractor shall indemnify, defend, and save harmless the Owner, its agents, or employees from and against all claims, demands, actions, suits, damages losses, expenses, costs, including attorney's fees, and judgments of every kind and description arising from, based upon, or growing out of the violation of any Federal, State, County or City law, by-law, ordinance of regulation by the Contractor, its agents, trainees, invitees, servants or employees. The Contractor further acknowledges that it is solely responsible for ensuring the safety of the premises to protect its employees, subcontractors, invitees, licensees and all other persons during the course of the work, and agrees to hold and save the Owner harmless against all claims involving alleged negligence by the Owner in failing to adequately ensure the safety of the site or otherwise ensure compliance with the Contract.
- 8.3. The Contractor shall indemnify, defend, save and hold harmless the Owner, its officers, agents, and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property, or other work in connection with the performance of the Contract.
- 8.4. Contractor shall pay all losses, claims, liens, settlements, or judgments of any nature whatsoever in connection with the foregoing indemnification, including but not limited to, reasonable attorney's fees (including appellate attorneys' fees and costs).
- 8.5. The Owner reserves the right to select its own counsel to conduct any defense in any such proceedings and all costs and fees associated therewith shall be the responsibility of the Contractor under the indemnification agreement set forth herein. Nothing contained herein is intended nor shall it be construed to waive the Owner's rights and immunities under the common law or Florida Statute 768.28, as amended from time to time.

Article 9 Bond Requirements

- 9.1 Concurrent with the execution of these Contract Documents, the Contractor shall tender to the Owner a performance bond and a payment bond acceptable to the Owner, each

in an amount equal to or greater than one hundred percent (100%) of the total Contract price. Cash, certificate of deposit, cashier's check, treasurer's check or bank draft of any national or state bank in the State of Florida may be tendered in lieu of the payment and the performance bond. Certificates of deposit, checks and bank drafts shall be made payable to the Owner. The premiums for the bonds shall be paid by the Owner in addition to the Contract Sum.

- 9.2 All surety bonds tendered must be written by a company duly authorized to do business in the State of Florida, and if furnished through a broker or agent, said broker or agent shall be registered in the State of Florida. If at any time after the execution of this Contract and the surety bonds, the Owner shall deem the surety or sureties upon such bonds to be unsatisfactory or, if for any reason such bonds cease to be adequate to cover the requirements of the Contract, the Contractor shall, at its sole expense and within five (5) days after the receipt of notice from the Owner, furnish an additional bond in such form and amount and with such surety as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed to be due under this Contract until such new or additional security shall be furnished in manner and form satisfactory to the Owner as to protect the interests of the Owner and ensure the payment of persons supplying labor and materials under the Contract.
- 9.3 The surety company shall indemnify and provide defense for the Town of Lake Park when called upon to do so for claims or suits against the Town of Lake Park arising out of the Contract. The amount of the Contract price is the sole limitation of this indemnification.

Article 10 Contract Changes

- 10.1 The Owner reserves the right to make, at any time prior to or during the progress of the work, such increases or decreases in quantities and such alterations in the details of construction, whether a substantial change or not, so long as they are consistent with the scope of the Work included in this Contract, including but not limited to alterations in the grades, dimensions or alignments of the Contract work, as may be found necessary or desirable by the Owner. Such increases, decreases or alterations shall not constitute a breach of Contract, shall not invalidate the Contract, nor release the Surety from any liability arising out of this Contract or the Surety bond. The Contractor agrees to perform the work, as altered, the same as if it had been a part of the original Contract.

Article 11 Enumeration of Contract Documents

The Contract Documents, which constitute the entire agreement between the Owner and Contractor are enumerated as follows:

1. Duly approved Change Orders, Addenda, and Modifications.
2. This Agreement Between Owner and Contractor and all amendments and addendum hereto
3. Bellingham Marine's Proposal dated August 31, 2006
4. Plans and Specifications.
5. Request for Proposals (RFP), Instructions to Proposers, and all RFP documents
6. Certificates of Insurance
7. Payment and Performance Bonds

In resolving conflicts, errors, and discrepancies between the various Contract Documents, precedent in interpretation shall be given in the foregoing order. The Contract Documents shall become part of this Contract as if physically attached as a part hereof, and all documents shall be interpreted together to yield the most consistent results to achieve the prouose of this Project.

Article 12 Contract Documents

- 12.1 The Contract Documents consist of this Agreement with Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and modifications issued after execution of this Agreement. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results.
- 12.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site and become generally familiar with the local conditions under which the Work is to be performed. The Contractor shall not, however, be required to conduct surveys or analyses of existing structures or tests of such surface conditions unless specifically directed to do so and compensated therefor under this Contract.
- 12.3 The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The work may constitute the whole or a part of the Project.

Article 13 Owner

- 13.1 The Owner shall furnish all surveys and reports describing the physical characteristics, including soil conditions, underwater objects, and buried obstructions that could interfere with the Work, legal limitations, and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy and completeness of all such reports and surveys.
- 13.2 The Contractor shall, without additional expense to the Owner, be responsible for obtaining all applicable and required licenses and permits and for complying with any applicable Federal, State and municipal laws, codes, and regulations in connection with the prosecution of the work.
- 13.3 The Contractor shall use its best efforts to obtain all necessary permits as soon as possible after the date of Contract commencement. Any delays in obtaining permits must be brought to the attention of the Owner without delay.

Article 14 Contractor

- 14.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over

construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

- 14.2 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 14.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- 14.4 The Contractor shall check all Plans and Specifications furnished to him immediately upon their receipt and shall promptly notify the Owner of all errors, inconsistencies, omissions and discrepancies. Figures marked on Plans shall, in general, be followed in preference to scale measurements. Anything mentioned in the Specifications and not shown on the Plans, or shown on the Plans and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. In case of a difference between the Plans and the Specifications, the Specifications shall govern. In case of a discrepancy either in the figures, in the Plans, or in the Specifications, the matter shall be submitted to the Owner who shall make a determination in writing. Any adjustment by the Contractor without such a determination by the Owner shall be at his own risk and expense. All deviations made by the Contractor from the Specifications and Plans will be compiled and provided to the Owner. The Owner may furnish from time to time such detail Plans and other information considered necessary to clarify the Contract.
- 14.5 Computed dimensions govern over scaled dimensions. In cases of discrepancy, the most stringent condition will apply with the governing order of documents as follows:
 1. Technical Specifications
 2. Plans
 3. Supplemental Conditions
 4. Contract
- 14.6 The Contractor shall pay all applicable taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time this Agreement is executed, whether or not yet effective, and which are legally required of the Contractor.
- 14.7 The Contractor shall comply with and give notices required by laws, ordinances, rules, negotiations, and lawful orders of public authorities bearing on the performance of the Work. The Contractor shall promptly notify the Owner if the Drawings and Specifications are observed by the Contractor to be at variance therewith.
- 14.8 The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, Subcontractors, and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

- 14.9 The Contractor shall review, approve, and submit to the Owner Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness. The Work shall materials, systems, or equipment is required by the Contract Documents, the Owner shall be entitled to rely upon the accuracy and completeness of such certifications.
- 14.10 No portion of the Work requiring submission of a Shop Drawing shall be commenced until the submittal has been approved by the Owner. Owner shall approve submittals in a timely manner so as not to delay Contractor's progress of the Work. All such portions of the Work shall be in accordance with approved submittals.
- 14.11 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials.
- 14.12 Nondiscrimination and Equal Opportunity Employment: During the performance of the Contract, the Contractor agrees as follows:
- 14.12.1 The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading; demotion or transfer; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 14.12.2 In the event of the Contractor's noncompliance with the nondiscrimination clauses of the Contract, or with any of such rules, regulations, or orders, the Contract may be canceled, terminated, or suspended in whole or in part, without liability to the Owner.
- 14.13 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The Contractor shall comply with the rules and regulations of the Florida Department of Commerce regarding industrial safety (Fla. Stat. Section 440.56), and with the standards set forth in the Occupational Safety and Health Act of 1970 (OSHA), and its amendments.
- 14.14 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
1. All employees on the work site and all other persons who may be affected thereby.
 2. The work and all materials and equipment incorporated therein.

3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, structures and utilities not designated for removal, relocation or replacement in the course of the work.

Article 15 Subcontracts

- 15.1. A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.
- 15.2. The Owner has the option to review and approve the persons or entities to whom the Contractor intends to award subcontracts provided that Owner notifies Contractor within 10 days after execution of the Contract Documents of its desire to exercise such option. Should the Owner wish to exercise this option, the Contractor shall furnish to the Owner in writing the names of the persons or entities and the Owner will promptly reply to the Contractor in writing stating whether Owner has reasonable objection to any such proposed person or entity. Failure of the Owner to exercise this option shall constitute notice of no reasonable objection, and failure of Owner to reject or object to any list of names or persons or entities within five (5) days of receipt of the same shall be deemed an acceptance by Owner.
- 15.3. The Contractor shall not be required to contract with anyone to whom the Contractor has a reasonable objection. Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner, and (2) allow to the Subcontractor the benefits of all rights, remedies and redress afforded to the Contractor by these Contract Documents.

Article 16 Construction by Owner or by Separate Contractors

- 16.1. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation.
- 16.2. The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

Article 17 Changes in the Work

- 17.1. The Owner, without invalidating the Contract, may order changes in the Work consisting of additions, deletions, or modifications, the Contract Sum and Contract Time being

adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner and Contractor.

- 17.2. The Contract Sum and Contract Time shall be changed only by Change Order.
- 17.3. The cost or credit to the Owner from a change in the Work shall be determined by mutual agreement.
- 17.4. If during the progress of the work, subsurface or latent physical conditions are encountered at the Site differing materially from those indicated in the Contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the Contractor disturbs the conditions or performs the affected work.
- 17.5. Upon receipt of written notification of differing site conditions from the Contractor, the Owner will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly. The Owner will notify the Contractor whether or not an adjustment of the Contract is warranted. The Owner will not allow a Contract adjustment for a differing site condition unless the Contractor has provided the required written notice.

Article 18 Protection of Persons and Property

- 18.1. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:
 1. employees on the Work and other persons who may be affected thereby;
 2. the Work and materials and equipment to be incorporated therein; and
 3. other property at the site or adjacent thereto.
- 18.2. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible except for damage or loss attributable to acts or omissions of the Owner or by anyone for whose acts he may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 15.2 .

- 18.3. The Contractor shall not be required to perform without consent any Work relating to asbestos, polychlorinated biphenyl (PCB), or any other substance which the Contractor reasonably believes to be a hazardous or dangerous waste.
- 18.4. In the event that the Contractor does encounter such material or conditions reasonably believed to involve hazardous or other substances, the Contractor shall immediately stop Work in the area and report the condition to the Owner in writing. The Contractor shall not be required to resume Work unless and until an appropriate agreement concerning testing, design, construction means, methods, sequences and safety precautions has been reached, and the Contract Time and the Contract Sum are adjusted to reflect the additional time, costs, and additional Work necessary to continue and complete the Project.
- 18.5. All operations of the Contractor, including storage of materials upon Owner's premises, shall be confined to areas authorized or approved by the Owner. Temporary buildings, storage sheds, shops, offices, etc., may be erected by the Contractor only with the approval of the Owner and shall be built with labor and materials furnished by the Contractor without expense to the Owner. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by him at his expense upon the completion of the work.
- 18.6. The Contractor shall not store materials, except those to be incorporated in the work, on the Contract site. Portions of completed work and materials incorporated in the work shall be deemed to have become the property of the Owner.
- 18.7. The Contractor shall maintain, where and when needed, suitable and sufficient guard signs and barriers, and at night, suitable and sufficient lights for the prevention of accidents. Guard signs and lights shall comply with OSHA and FDOT regulations. Maintenance of traffic control shall comply with FDOT regulations and standards.

Article 19 Correction of Work

- 19.1. All work shall be subject to inspection and testing by the Owner at all reasonable times and at all places prior to acceptance. Any such inspection and testing is for the sole benefit of the Owner, and shall not relieve the Contractor of the responsibility of providing quality control measures to assure that the work strictly complies with the Contract requirements. No inspection or testing by the Owner shall be construed as constituting or implying acceptance. Inspection or testing shall not relieve the Contractor of responsibility for damage to or loss of the material or work in place prior to acceptance, or in any way will affect the continuing rights of the Owner after acceptance of the completed work.
- 19.2. The Contractor shall, without charge, replace any material or correct any workmanship found by the Owner not to conform to the Contract requirements, unless the Owner consents to accept such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Owner:

- 19.2.1. May, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or
- 19.2.2. May terminate the Contractor's right to proceed. The Contractor shall furnish promptly, without additional charge, all facilities, labor and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Owner. All inspection and testing by the Owner shall be performed in such manner as not to unnecessarily delay the work. The Owner reserves the right to charge to the Contractor any additional cost of inspection or testing when material or workmanship is not ready at the time specified by the Contractor for inspection or testing, or when re-inspection or retesting is necessitated by work not complying with the Contract and/or any applicable Federal, State or municipal laws, codes and regulations in connection with the prosecution of the work.
- 19.3. Should it be considered necessary or advisable by the Owner at any time before acceptance of the entire work, to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor and material. If such work is found to be defective or not conforming in any material respect, due to the fault of the Contractor or his subcontractors, the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, an equitable adjustment shall be made in the Contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted a suitable extension of time.
- 19.4. Unless otherwise provided in this Contract, acceptance by the Owner shall be made as promptly as practicable after completion and inspection of all work required by this Contract, or that portion of the work, that the Owner determines can be accepted separately. Acceptance shall be final and conclusive, except as regards latent defects, fraud or such gross mistakes as may amount to fraud or as regards the Owner's rights under any warranty or guarantee. The Owner shall evidence acceptance of the work in writing by approved request for "Final Payment".
- 19.5. Upon written authorization from the Owner, which shall not be unreasonably withheld, the Contractor reserves the right to adjust the final finger locations plus or minus six (6) inches from the approved layout. Such deviations may be governed by specific site conditions, installation procedures, special utility applications and similar related situations.

Article 20

Termination For Convenience of the Owner

- 20.1. Upon seven (7) calendar days written notice, delivered by certified mail, return receipt requested to the Contractor, the Owner may, without cause and without prejudice to any other right or remedy, terminate the Contract for the Owner's convenience whenever the Owner determines that such termination is in the best interest of the Owner. Where the Contract is terminated for the convenience of the Owner, the notice of termination must state that the Contract is being terminated for the convenience of the Owner under the termination clause and the extent of the termination. Upon receipt of the notice of termination, the Contractor shall promptly discontinue all work at the time.

20.2. When the Owner terminates the entire Contract, or any portion thereof, before the Contractor completes all items of work in the Contract, the Owner will make payment for completed work based on the following:

If Lump Sum Price, as a reasonable percentage of the Lump Sum price for completed work and as determined by the Town Manager. These payments will constitute full and complete compensation for such work or items. No payment of any kind or amount will be made for items of work not started. The Owner will not consider any claim for loss of anticipated profits, or overhead of any kind including home office and jobsite overhead or other indirect impacts.

20.3. Termination of a Contract or a portion thereof, under the provisions of this section, does not relieve the Contractor or the surety of its responsibilities for the completed portion of the Contract or its obligations for and concerning any just claims arising out of the work performed

Article 21 Non-Exclusivity

The Award of this Contract shall not impose any obligation on the Owner to utilize the Contractor, for all work of this type, which may develop during the Contract period. The Owner specifically reserves the right to concurrently contract with other companies for similar work if it deems such action to be in the Owner's best interest.

Article 22 Funding

In the event that sufficient budgeted funds are not available for a new fiscal period, the Owner shall notify the Contractor of such occurrence and the Contract shall terminate on the last day of the current fiscal period without penalty or expense to the Owner. In such event Contractor shall be compensated as provided in 20.2.

Article 23 Right to Audit

The Owner reserves the right to audit the Contractor's records as such records relate to the services and the Contract between the Owner and the Contractor. All records shall be kept in a way so as to permit inspection pursuant to Chapter 119, Florida Statutes. The records of the Contractor shall be retained for three (3) years from the date of final payment

Article 24 Notice

All notices and invoices to the Owner shall be sent to the following address:

Town of Lake Park
Attention: Town Manager
535 Park Avenue

Lake Park, FL 33403

With a copy to the Town Attorney: Baird & Roselli

11891 U. S. Highway One, Suite 100

North Palm Beach, FL 33408

All notices and invoices to the Contractor shall be sent to the following address:

Florida Floats, Inc d/b/a Bellingham Marine

1813 Dennis Street

Jacksonville, FL 32204

Article 25 Miscellaneous Provisions

- 25.1 The laws of the State of Florida shall govern all aspects of this Contract. In the event that it is necessary for either party to initiate legal action regarding this Contract, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justifiable in federal court.
- 25.2 Changes made by the Owner will not be considered to waive any of the provisions of the Contract, nor may the Contractor make any claim for loss of anticipated profits because of the changes, or by reason of any variation between the approximate quantities and the quantities of work actually performed. All work shall be performed as directed by the Owner and in accordance with the Contract Documents.
- 25.3 The Contractor shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this Contract without the prior written consent of the Owner.
- 25.4 If either party utilizes legal action, including appeals, to enforce this Contract, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.
- 25.5 The Contractor, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Contract. The Owner undertakes no duty to ensure such compliance, but will attempt to advise the Contractor, upon request as to such laws of which it has present knowledge.
- 25.6 The Contractor is an independent Contractor and is not an employee or agent of the Owner. Nothing in this Contract shall be interpreted to establish any relationship other than that of an independent Contractor, between the Owner and the Contractor, its employees, agents, subcontractors, or assigns, during or after the performance of this Contract. The Contractor is free to provide similar services to others.
- 25.7 This Contract states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. The Contractor recognizes that any representations, statements or negotiations made by the Owner's staff do not suffice to legally bind the Owner in a contractual relationship unless they have been reduced to writing, approved and signed by an authorized

Owner's representative. This Contract, once properly executed, shall bind the parties, their assigns, and successors in interest.

- 25.8 Should any part, term or provision of this Agreement be by the courts decided to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby.

Article 26
Suspension of the Work and Termination of the Contract

- 26.1 If the Work is stopped for a period of more than thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, or because of an act of force majeure, such as an earthquake, floods, war or other act outside the Control of Contractor, in any case through no act or fault of the Contractor or a Subcontractor or their agents or employees or any of the persons performing any of the Work under a contract with the Contractor, or if the Owner fails to make payment to the Contractor through no fault of the Contractor for a period of thirty (30) days, the Contractor may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment for all Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages applicable to the Project.
- 26.2 If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after ten (10) days' written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor. Alternatively, provided sufficient cause exists to justify such action, the Owner may terminate the contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method the Owner may deem expedient. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor, but if such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

Article 27
Contractor's Registration Number

Contractor's Florida State Contractor's registration number is #CGC 059769.

Owner: Town of Lake Park

By: Paul Castro

Title: Mayor

Date: November 15, 2006

Signature: 

**Contractor: Florida Floats, Inc DBA
Bellingham Marine**

By: Lee V. Bazile

Title: Vice President, SE Division General Manager

**TOWN OF LAKE PARK
UNILATERAL PAYMENT**

PROJECT DESCRIPTION:

Page 1 of 1

Contract No: _____

Date of Contract: _____

The above shall be referred to as the "Contract".

PAYMENT INFORMATION:

1. On or about the ____ day of _____, 2006, the Town of Lake Park determined that the Contractor is due additional sums of money for work performed under the Contract and on the project described above, and the Town has elected to make payment to the Contractor pursuant to the Contract as set forth and itemized below:

DESCRIPTION OF EACH ITEM OF WORK	AMOUNT

Revised Plan Sheet

Number(s): _____

Granted Time (Due to delays to controlling items of work shown on approved work schedule): _____

Reason(s) for

Granted Time: _____

-
2. The quantities to be paid shall be necessary to complete the Contract. The quantities so determined shall be paid at the unit prices stated above and on the attached sheet(s).

3. This unilateral payment does not alter or change in any manner the force and effect of the original Contract Documents, including previous amendments thereto, except insofar as the same is altered and amended by this document.
4. By acceptance of this unilateral payment the Contactor does not waive any rights the Contractor may have against the Owner for payment of any additional sums the Contractor claims are due for the described work.
5. All sums paid by the Owner hereunder shall be credited against the sums that may be due the Contractor for the itemized work described above in the amounts set forth above. The Contractor shall apply the payment made hereunder to the items described above and in the amount shown above.

Approved By:

Amount this Payment

\$ _____

Print Name and Title

Executed By:

Date of Funds

Approval: _____

**CONTRACTOR'S
AFFIDAVIT AND FINAL RELEASE OF LIEN
STATE OF FLORIDA
COUNTY OF PALM BEACH
CONTRACT NO. _____**

BEFORE ME, the undersigned authority personally appeared _____, who after being sworn by me first duly sworn, deposes and says that:

1. He/She is _____ (Title), of _____, (Company) doing business in the State of Florida, (hereinafter called "Contractor").
2. Contractor, pursuant to Contract dated _____, (hereinafter referred to as "Contract") with TOWN OF LAKE PARK, (hereinafter referred to as "OWNER"), has heretofore furnished or caused to be furnished labor, material and services for the construction of certain improvements as more particularly set forth in the Contract.
3. Contractor represents that all work to be performed under the Contract has been fully completed and that all persons and firms who furnished material, labor and/or services incident to the completion of said work have been paid in full.
4. The Contractor, for and in consideration of final payment in the amount of \$ _____, and all other previous payments paid by Owner to Contractor, does hereby waive, release, remise and relinquish the Contractor's right to claim, demand or impose a lien or liens for work done or materials and/or services furnished or any other class of liens whatsoever, on any of the premises owned by Owner on which improvements have been completed in connection with the Contract.
5. The Contractor herein makes this Affidavit and Final Release of Lien for the express purpose of inducing Owner to make final disbursement and payment to the Contractor in the amount of \$ _____.
6. This Lien is made by Contractor with full knowledge of the applicable laws of the State of Florida. In addition to such rights as may be afforded to Owner under said applicable laws, Contractor expressly agrees to indemnify and save Owner harmless from any and all actual costs and expenses, including reasonable attorney's fees, arising out of claims by laborers, sub-contractors or materialmen who might claim that they have not been paid for services or material furnished by or through the Contractor in connection with the work performed under the Contract.
7. To the best of the Contractor's knowledge and belief, the following is a list of all employed under this Contract who have filed a Notice to Owner with the Town of Lake Park.

	NAME	ADDRESS	AMOUNT DUE
1.			
2.			
3.			
4.			

(Attached a separate sheet if necessary)

The Contractor herein does hereby represent that he has authority to execute a full and final release Contractor as set forth above.

(Corporate Seal)

By: _____
 (Title)

SWORN TO and subscribed before me this

_____ day of _____, 2006

 (Notary Seal)

 (Notary Public)

My Commission Expires: _____

PROJECT:	
CONTRACTOR:	
CERTIFICATE OF FINAL ACCEPTANCE TOWN OF LAKE PARCONTRAC TOR FOR:	
CONTRACT DATE:	
DATE OF ISSUANCE:	

PROJECT OR DESIGNATED PORTION SHALL INCLUDE:

The Work performed under this contract has been reviewed and found to be complete. The Date of Final Acceptance of the Project or portion thereof designated above is hereby established as which is also the date of commencement of applicable warranties required by the Contract Documents, so the Owner can occupy or utilize the Work or designated portion thereof for the use for which it is intended, as expressed in the Contract Document.

BY _____ date

The Owner accepts the Work or designated portion thereof as substantially complete and will assume full possession thereof at _____ (time) on _____ (date).

OWNER _____ date

**SUBCONTRACTOR'S, MATERIALMEN AND LABORER'S
FINAL WAIVER OF LIEN**

STATE OF FLORIDA
COUNTY OF PALM BEACH
CONTRACT NO. _____

WHEREAS, the undersigned, _____, has been heretofore employed by _____ to furnish certain services, materials and/or labor to the Town of Lake Park on property located at: _____

NOW, THEREFORE, the undersigned, for a good and valuable consideration of _____ dollars, the receipt of which is hereby acknowledged, hereby and now waives unto the TOWN OF LAKE PARK any and all lien, right of lien or claim of whatsoever kind or character on the above described real estate, on account of any and all labor or material, or both, furnished for or incorporated into said real estate by the undersigned; and further certifies that the consideration moving to the undersigned for executing this Waiver of Lien has been mutually given and accepted as absolute cash payment and not as a conditional or part payment or as security for payment.

The undersigned herein does hereby represent that he has authority to execute this Final Release of Lien.

Signed, sealed and delivered this _____ day of _____, 2006.

(Corporate Seal)

By: _____
(Title)

SWORN TO and subscribed before me this

_____ day of _____, 2006

(Notary Seal)

(Notary Public)

My Commission Expires: _____

Date: _____

Signature: _____