



# AGENDA

Lake Park Town Commission  
 Town of Lake Park, Florida  
 Regular Commission Meeting  
 Wednesday, May 21, 2008, 7:30 P.M.  
 Lake Park Town Hall  
 535 Park Avenue

<b>Desca DuBois</b>	—	<b>Mayor</b>
<b>Edward Daly</b>	—	<b>Vice-Mayor</b>
<b>G. Chuck Balius</b>	—	<b>Commissioner</b>
<b>Jeff Carey</b>	—	<b>Commissioner</b>
<b>Patricia Osterman</b>	—	<b>Commissioner</b>
.....		
<b>Maria V. Davis</b>	—	<b>Town Manager</b>
<b>Thomas J. Baird, Esq.</b>	—	<b>Town Attorney</b>
<b>Vivian Mendez Lemley</b>	—	<b>Town Clerk</b>

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision of the Town Commission, with respect to any matter considered at this meeting, such interested person will need a record of the proceedings, and for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. *Persons with disabilities requiring accommodations in order to participate in the meeting should contact the Town Clerk's office by calling 881-3311 at least 48 hours in advance to request accommodations.*

- A. CALL TO ORDER
- B. INVOCATION
- C. PLEDGE OF ALLEGIANCE
- D. ROLL CALL
- E. ADDITIONS/DELETIONS - APPROVAL OF AGENDA
- F. PUBLIC and OTHER COMMENT  
 This time is provided for audience members to address items that do not appear on the Agenda. Please complete a comment card and provide it to the Town Clerk so speakers may be announced. Please remember, comments are limited to a TOTAL of three minutes.
- G. COMMISSIONER COMMENTS, TOWN ATTORNEY, TOWN MANAGER:
- H. PLANNING & ZONING BOARD MEMBERSHIP APPLICATION ISSUE:

- I. **CONSENT AGENDA:** All matters listed under this item are considered routine and action will be taken by one motion. There will be no separate discussion of these items unless a Commissioner or person so requests, in which event the item will be removed from the general order of business and considered in its normal sequence on the Agenda. Any person wishing to speak on an Agenda item is asked to complete a public comment card located on either side of the Chambers and given to the Town Clerk. Cards must be submitted before the item is discussed.

For Approval:

1. Award of Contract to Construct the South Breakwater at the Marina Tab1
2. Resolution No. 27-05-08 Revise the Classification and Pay Plan to Amend the Job Description for the Position of Recreation Director Tab2
3. Resolution No. 28-05-08 Revise the Classification and Pay Plan to Provide for the Position of Camp Counselor Tab3
4. Resolution No. 29-05-08 Revise the Classification and Pay Plan to Provide for the Position of Recreation Bus Driver Tab4
5. Resolution No. 30-05-08 Building and Signage Fees Tab5
6. Resolution No. 31-05-08 Special Magistrate Tab6
7. Notification of Purchase Order for Sidewalk Repair/Replacement in the Amount of \$14,185.65 Tab7

J. **PUBLIC HEARING(S)**

**SIGNAGE WAIVER IN THE PARK AVENUE DOWNTOWN DISTRICT:**

8. Request for a Sign Waiver for the Kelsey Market Sign in the PADD Tab 8

K. **ORDINANCE ON SECOND READING:**

9. **ORDINANCE NO. 05-2008 Mid Year Budget Adjustment**  
AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING THE TOWN BUDGET FOR FISCAL YEAR 2007-2008 AS PREVIOUSLY ADOPTED BY ORDINANCE NO. 24-2007; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE. Tab 9

10. **ORDINANCE NO. 06-2008 Signage in the Park Avenue Downtown District**  
AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING CHAPTER 78 ENTITLED "ZONING," ARTICLE III, SECTION 78-70, ENTITLED "PARK AVENUE DOWNTOWN DISTRICT" ("PADD"), TO AMEND SECTION 78-70(p) TO PROVIDE FOR ADDITIONAL REGULATIONS PERTAINING TO TEMPORARY SIGNS FOR REAL ESTATE SALES AND LEASING PERMITTED IN THE PADD AND TO REQUIRE A TOWN SIGN PERMIT BE OBTAINED PRIOR TO ERECTING OR DISPLAYING ANY PERMITTED SIGN WITHIN THE PADD; AMENDING TABLE 78-70-1 ENTITLED "PERMITTED SIGNS" TO CLARIFY CERTAIN RESTRICTIONS ON SIGN SIZE, NUMBER, COPY, AND OTHER RESTRICTIONS PERTAINING TO PERMITTED SIGNS IN THE PADD; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR

**11. ORDINANCE NO. 07-2008 Reasonable Accommodations Procedures**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING CHAPTER 78, ARTICLE I, SECTION 78-6, ENTITLED "REASONABLE ACCOMMODATIONS PROCEDURES" TO CHANGE THE DESIGNATION OF THE HEARING OFFICER FOR PUBLIC HEARINGS ON REQUESTS SUBMITTED TO THE TOWN FOR REASONABLE ACCOMMODATIONS, FROM THE TOWN MANAGER TO A SPECIAL MAGISTRATE APPOINTED BY THE TOWN COMMISSION; TO PROVIDE SPECIFIC PROVISIONS FOR MAIL AND NEWSPAPER NOTICE OF THE PUBLIC HEARING ON ANY REQUEST FOR A REASONABLE ACCOMMODATION; TO PROVIDE FOR AN OPPORTUNITY BY MEMBERS OF THE PUBLIC TO BE HEARD ON THE REQUEST FOR A REASONABLE ACCOMMODATION AT THE PUBLIC HEARING; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Tab 11

**12. ORDINANCE NO. 08-2008 General Regulations and Restrictions Pertaining to Animals**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING THE CODE OF ORDINANCES FOR THE TOWN OF LAKE PARK, FLORIDA BY CREATING NEW CHAPTER 11 TO BE ENTITLED "ANIMALS"; PROVIDING FOR THE CREATION OF NEW ARTICLE 1, TO BE ENTITLED "GENERAL REGULATIONS"; PROVIDING FOR THE CREATION OF NEW SECTION 11-1 TO BE ENTITLED "DEFINITIONS"; PROVIDING FOR THE CREATION OF NEW SECTION 11-2 TO BE ENTITLED "BIRD SANCTUARY DECLARED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-3 TO BE ENTITLED "CRUEL AND INHUMANE TREATMENT OF ANIMALS PROHIBITED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-4 TO BE ENTITLED "PROVISION OF FOOD AND WATER TO CONFINED ANIMALS REQUIRED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-5 TO BE ENTITLED "MINIMUM REQUIREMENTS FOR THE POSSESSION AND SHELTERING OF CERTAIN ANIMALS"; PROVIDING FOR THE CREATION OF NEW SECTION 11-6 TO BE ENTITLED "MAXIMUM NUMBER OF HOUSEHOLD PETS"; PROVIDING FOR THE CREATION OF NEW SECTION 11-7 TO BE ENTITLED "REMOVAL OF PET EXCREMENT REQUIRED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-8 TO BE ENTITLED "NEGLECT AND/OR ABANDONMENT OF ANIMALS PROHIBITED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-9 TO BE ENTITLED "NUISANCES CREATED BY ANIMALS PROHIBITED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-10 TO BE ENTITLED "ANIMALS WITH CONTAGIOUS DISEASES PROHIBITED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-11 TO BE ENTITLED "AID TO INJURED ANIMALS REQUIRED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-12 TO BE ENTITLED

**“RESTRICTIONS ON THE TRANSPORT OF ANIMALS IN AN OPEN BED OF VEHICLES”; PROVIDING FOR THE CREATION OF NEW ARTICLE II OF CHAPTER 11 TO BE ENTITLED “SUPPLEMENTAL REGULATIONS PERTAINING PRIMARILY TO DOGS AND CATS”; PROVIDING FOR THE CREATION OF NEW SECTION 11-13 TO BE ENTITLED “REGISTRATION TAGS AND LICENSES FOR DOGS AND CATS REQUIRED”; PROVIDING FOR THE CREATION OF NEW SECTION 11-14 TO BE ENTITLED “DOGS RUNNING AT-LARGE PROHIBITED”; PROVIDING FOR THE CREATION OF NEW SECTION 11-15 TO BE ENTITLED “ANIMALS INJURING OR KILLING OTHER ANIMALS PROHIBITED”; PROVIDING FOR THE CREATION OF NEW SECTION 11-16 TO BE ENTITLED “DOGS DAMAGING PROPERTY OF OTHERS PROHIBITED”; PROVIDING FOR THE CREATION OF NEW SECTION 11-17 TO BE ENTITLED “INJURY TO AND/OR INTERFERENCE WITH POLICE DOGS PROHIBITED”; PROVIDING FOR THE CREATION OF NEW SECTION 11-18 TO BE ENTITLED “REGULATIONS PERTAINING TO VICIOUS ANIMALS AND DANGEROUS DOGS”; PROVIDING FOR THE CREATION OF NEW SECTION 11-19 TO BE ENTITLED “IMPOUNDMENT”; PROVIDING FOR THE CREATION OF NEW SECTION 11-20 TO BE ENTITLED “PENALTIES; PRIMA FACIE EVIDENCE OF VIOLATIONS”; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**Tab 12**

**L. GENERAL APPROVAL OF ITEM:**

**13. Community Redevelopment Agency (CRA) Alleyway Project Loan      Tab 13**

**M. DISCUSSION AND POSSIBLE ACTION:**

**14. Should the Town Step in and Clean up Foreclosure/Abandoned Properties Tab 14**

**15. Proposed Reduction in the 2008 Fireworks Festival Expenditures      Tab 15**

**16. Dogs in Parks      Tab 16**

**N. ADJOURNMENT:**

# **Board Membership**

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

Meeting Date: **May 21, 2008**

Agenda Item No. *Board Applicants*

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

**SUBJECT: PLANNING & ZONING BOARD APPLICATION ISSUE**

**RECOMMENDED MOTION/ACTION:** No action necessary, this is for information purposes only.

Approved by Town Manager *W. Davis* Date: *5/15/08*  
*Vivian Mendez* - Town Clerk *5/13/08*  
 Name/Title Date of Actual Submittal

<b>Originating Department:</b>  <b>Town Clerk</b>	Costs: \$ 0  Funding Source:  Acct. #	<b>Attachments:</b> Planning & Zoning Board Applicant Ballot
<b>Department Review:</b> <input type="checkbox"/> Attorney _____ <input type="checkbox"/> Community Development _____ <input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____	<input type="checkbox"/> Grants _____ <input type="checkbox"/> Human Resources _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Public Works _____ <input type="checkbox"/> Recreation _____ <input checked="" type="checkbox"/> Town Clerk <i>V.M.C.</i> <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ OR Not applicable in this case <u><i>n/a</i></u>  <b>Please initial one.</b>

**Summary Explanation/Background:** At the Regular Commission Meeting of May 7, 2008 five applicants applied for the two regular membership positions on the Planning & Zoning Board. The names announced that had been chosen to the board were Mason Brown and Judith Thomas. After reviewing the ballots on Friday, May 9, 2008 and error was discovered. Mr. Brown had received three votes and not four as announced. Mr. Brown and another candidate, Mary Frances Gambino both received three votes resulting in a tie. At the next Regular Commission Meeting of June 4, 2008 the two board member applications we be on the agenda for the Commission to re-cast their vote for a board member for the Planning & Zoning Board. I apologize for the error and any inconvenience it has caused the Commission or applicants.

# BALLOT

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

	Yes	No
Mason Brown	<u><del>X</del></u>	___
Mary Frances Gambino	___	<u><del>X</del></u>
Robin Maibach	___	<u><del>X</del></u>
Kendall Rumsey	___	<u><del>X</del></u>
Judith Thomas	<u><del>X</del></u>	___

- NO OTHER APPLICATIONS HAVE BEEN RECEIVED

# BALLOT

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

	Yes	No
Mason Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mary Frances Gambino	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robin Maibach	<input type="checkbox"/>	<input type="checkbox"/>
Kendall Rumsey	<input type="checkbox"/>	<input type="checkbox"/>
Judith Thomas	<input type="checkbox"/>	<input type="checkbox"/>

- NO OTHER APPLICATIONS HAVE BEEN RECEIVED



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	Yes	No
Mason Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mary Frances Gambino	<input type="checkbox"/>	<input type="checkbox"/>
Robin Maibach	<input type="checkbox"/>	<input type="checkbox"/>
Kendall Rumsey	<input type="checkbox"/>	<input type="checkbox"/>
Judith Thomas	<input checked="" type="checkbox"/>	<input type="checkbox"/>

- NO OTHER APPLICATIONS HAVE BEEN RECEIVED

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	Yes	No
Mason Brown	—	<u>X</u>
Mary Frances Gambino	<u>X</u>	—
Robin Maibach	—	<u>X</u>
<del>Kendall Rumsey</del>	<del>—</del>	<del>—</del>
Judith Thomas	<u>X</u>	—

- NO OTHER APPLICATIONS HAVE BEEN RECEIVED

# BALLOT

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

	Yes	No
Mason Brown	—	—
Mary Frances Gambino	<input checked="" type="checkbox"/>	—
Robin Maibach	—	—
Kendall Rumsey	—	—
Judith Thomas	<input checked="" type="checkbox"/>	—

- NO OTHER APPLICATIONS HAVE BEEN RECEIVED

# Consent Agenda

# TAB 1

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

**Meeting Date: May 21, 2006**

Agenda Item No. *Tab 1*

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

**SUBJECT: Award Contract to Construct the South Breakwater at the Marina to Vance Construction, Inc. in an amount not to exceed \$273,878**

**RECOMMENDED MOTION/ACTION: Approve**

Approved by Town Manager *W. Davis* Date: *5/13/08*

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

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

<b>Originating Department:</b> Town Manager	<b>Costs: \$ 248,980 with 10% contingency not to exceed \$273,878</b>  <b>Funding Source:</b> Acct. # Marina Debt Service	<b>Attachments:</b> Engineer's Estimate, Proposal from Vance Construction, Contract
<b>Department Review:</b> <input type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ OR Not applicable in this case _____:  Please initial one.

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

Meeting Date: May 21, 2008

Agenda Item No.

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

**SUBJECT:** Award Contract to Construct the South Breakwater at the Marina to Vance Construction, Inc. in an amount not to exceed \$273,878

**RECOMMENDED MOTION/ACTION:** Approve

Approved by Town Manager *W. J. Davis* Date: 5/13/08

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

<b>Originating Department:</b> Town Manager	<b>Costs:</b> \$ 248,980 with 10% contingency not to exceed \$273,878  <b>Funding Source:</b> Acct. # Marina Debt Service	<b>Attachments:</b> Engineer's Estimate, Proposal from Vance Construction, Contract
<b>Department Review:</b> <input checked="" type="checkbox"/> Town Attorney <u><i>[Signature]</i></u> <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case _____  Please initial one.

**Summary Explanation/Background:** The existing floating dock located at the southeast end of the marina is not the proper type of dock to attenuate the amount of boat wave energy coming from the east. To that end, in 2007, the Town Commission directed staff to replace the floating dock with a detached break water. Staff hired Cutcher and Associates to assist with the permitting and construction drawings. The permitting process extended to over one year due to the various regulatory agency reviews.

Vance Construction provided to the Town a proposal dated October 20, 2007 in the amount of \$248,980, which was based on construction drawings provided by Cutcher and Associates, Inc. The proposal also called for an added cost of \$350 per rock punch if rock is encountered while driving pilings. Vance Construction has competitively bid and has been awarded a number of municipal marine projects over the past year. Staff is utilizing a recently awarded Town of Palm Beach Contract to "piggyback" for the award of the S. Break Water Project. Additionally, Vance Construction Co. recently constructed the final phase of the Lake Shore Park Seawall Project in a highly commendable fashion.

As stated above, the proposal provided by Vance Construction was provided on October 20, 2007. Through negotiations with the engineer and staff, Vance Construction has agreed to honor the seven month old cost proposal. Additionally, we have placed a 10% cap of the contract amount for an allowance in the event the contractor encounters rock while driving pilings.

This proposal does not include the cost of the required relocation and repair of the existing Bellingham floating dock. The proposal for the relocation of the floating dock will be presented for award at the June 4, 2008 Commission meeting.



# **Cutcher & Associates, Inc.**

## **Coastal Engineers**

Voice: (561) 748-6746

1.

Fax: (561) 748-6865

Tequesta, FL 33469

Email: depth@gate.net

752 North US Hwy

*RECEIVED*

NOV 28 2007

*Town Of Lake Park  
Office Of Town Manager*

November 26, 2007

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

### **RE: Engineer's Cost Estimate for South Breakwater Construction**

Maria:

This letter addresses the estimated construction costs for the recently designed breakwater to be located south of the marina entrance.

The total breakwater length is 209'. This total length includes the main segment of 193' plus the 16' return wall at the marina entrance. Based on the cross section design which is shown in the construction plans (attached), the estimated unit price is \$1,300 per foot of wall. The unit price takes into consideration the material type and quantity, anticipated construction methodology and the estimated construction schedule. Based on the unit price, and total proposed wall length, the breakwater construction estimate is valued at \$271,700.

This estimate does not include either the temporary relocation of the floating dock or the shortening and reattachment of the dock once the breakwater is completed. This phase of the work is to be performed by Bellingham Marine directly. We are currently awaiting a proposal for this work from Bellingham Marine. The estimate also does not include permitting or installation of the temporary no wake zone signage to facilitate the construction. We anticipate that the selected contractor would install these signs for an additional fee once the necessary permit(s) are obtained from FWC.

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

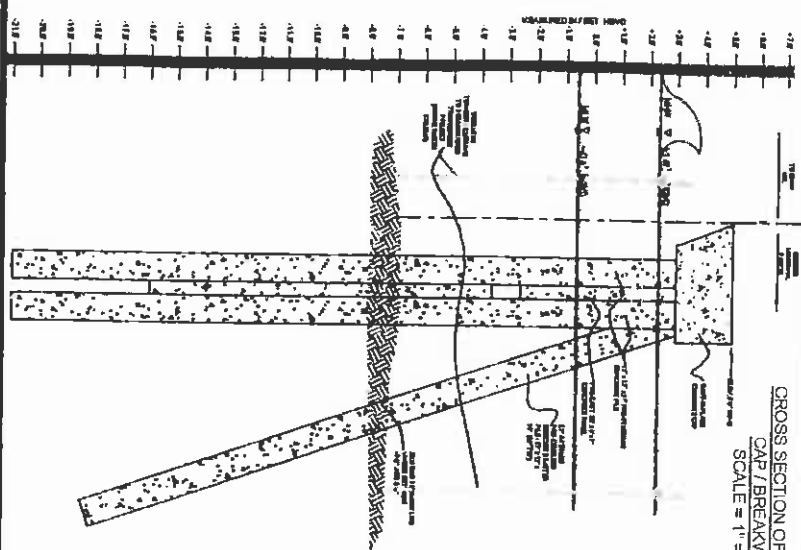
Sincerely,



Robert Cutcher, P.E.

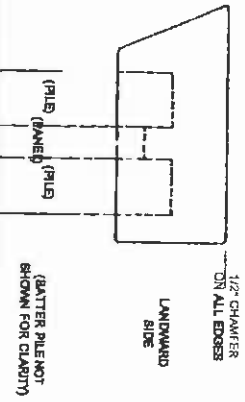
Cc: John Downs, P.E. – Calvin & Giordano, Assoc. Inc.

MEASUREMENTS		REVISIONS	
NO.	DATE	NO.	DESCRIPTION



GROSS SECTION OF CONCRETE CAP / BREAKWATER  
SCALE = 1" = 2'-0"

CONCRETE BREAKWATER CAP DETAIL  
SCALE = 1" = 1'-0"

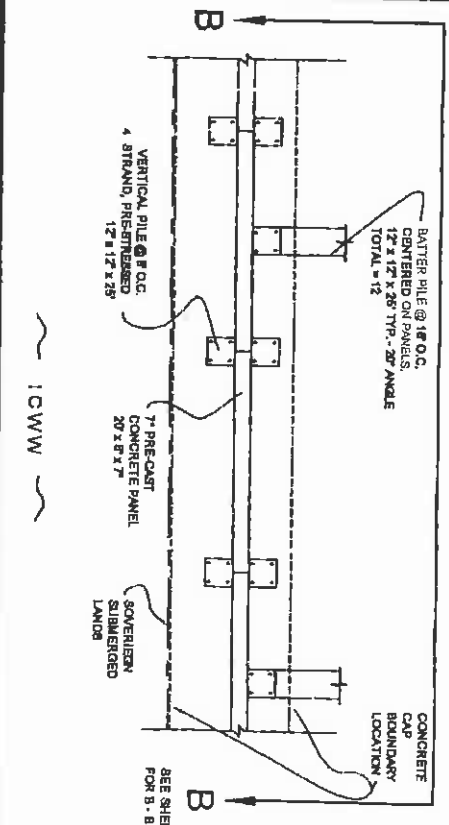


NO.	DATE	BY	CHKD.	DESCRIPTION

TOWN OF LAKE PARK MARINA  
SOUTH BREAKWATER CONSTRUCTION  
BREAKWATER & CAP SECTIONS

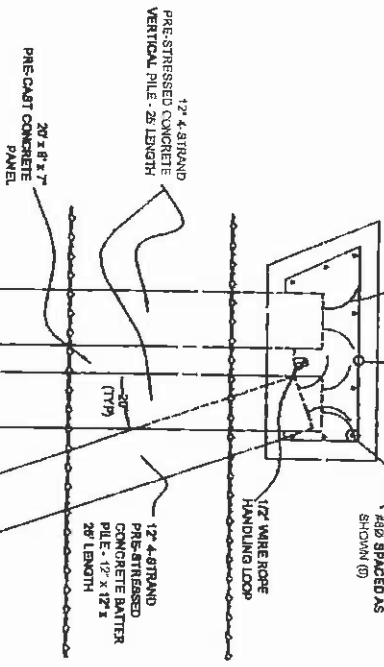
CUTCHER & ASSOCIATES, INC.  
COASTAL ENGINEERS  
900 E. LINDSEY BLVD., SUITE 210  
JUPITER, FLORIDA 33417  
TEL: (561) 748-8745 FAX: (561) 748-8855  
E-MAIL: info@cutcherandassociates.com  
P.L. No. 30722 / A.M.A. Cert. No. 8641

NO.	DATE	BY	CHKD.	DESCRIPTION



PLAN VIEW OF PANELS AND PILES  
SCALE = 1" = 2'-0"

CONCRETE BREAKWATER CAP REINFORCING STEEL DETAIL  
SCALE = 1" = 1'-0"



CONCRETE NOTE:  
- F<sub>ck</sub> 5,000 PSI @ 28 DAYS - WATER CONTENT - 0.40  
- MAINTAIN MINIMUM 4\"/>

NOTE: NOT TO BE USED FOR CONSTRUCTION UNLESS APPROVED.  
APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_ DATE PRINTED: 11/25/2010

# PLAN VIEW - BREAKWATER DETAIL

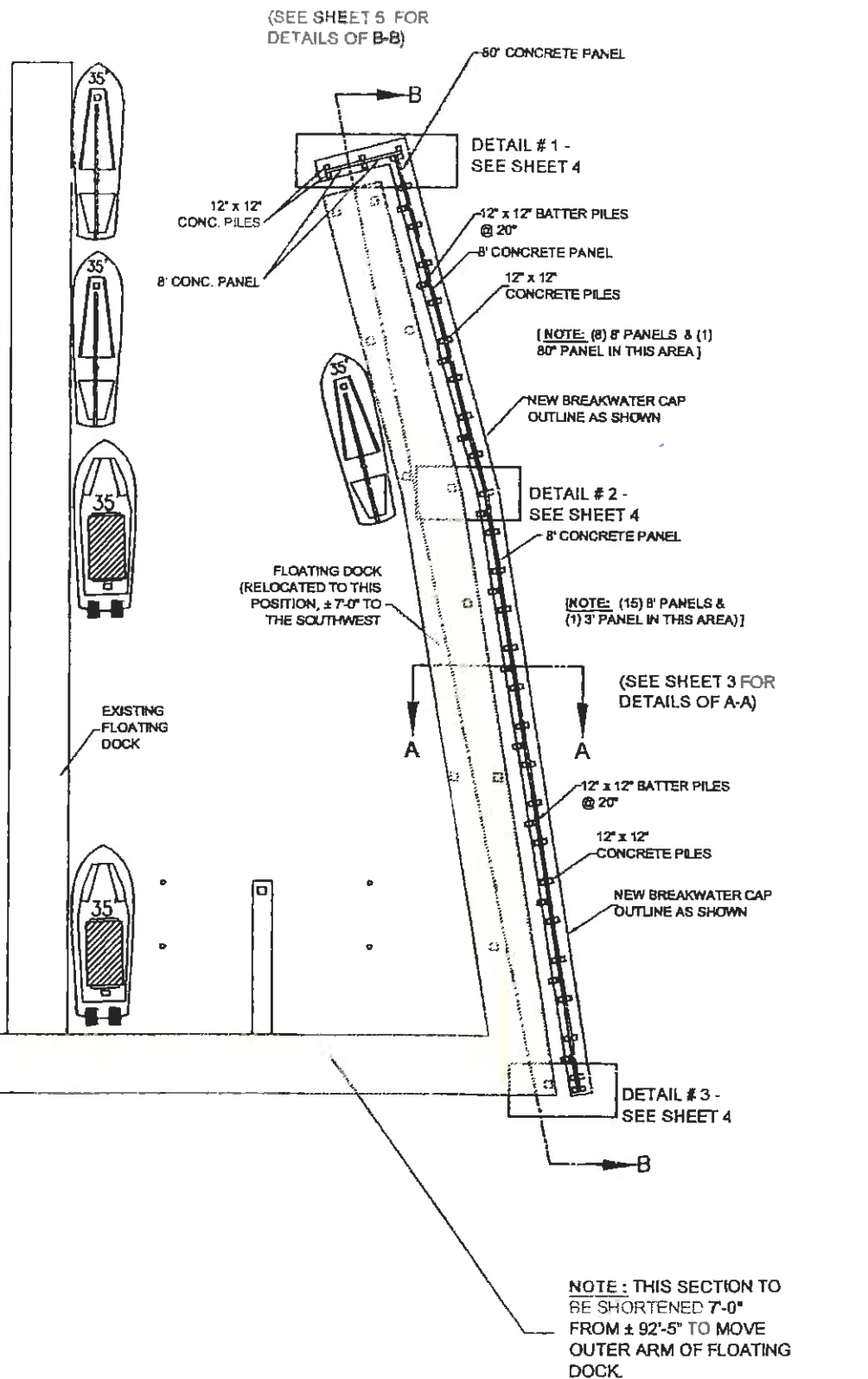
SCALE" 1" = 10'-0"

NOTES: THIS TO BE USED FOR CONSTRUCTION UNLESS APPROVED OTHERWISE. DATE PRINTED: 10/20/04

**CUTCHER & ASSOCIATES, INC.**  
**COASTAL ENGINEERS**  
 900 E. Independence Rd., Suite 310  
 Jupiter, Florida 33477  
 Ph. (561) 748-0745 Fax (561) 748-0865  
 Email: info@cutcherassociates.com  
 P.E. No. 30772 / Arch. Cons. No. 8641

**TOWN OF LAKE PARK MARINA**  
**SOUTH BREAKWATER CONSTRUCTION**  
**PLAN VIEW OF NEW BREAKWATER**

NO.	DATE	DESCRIPTION	BY	CHKD



(SEE SHEET 5 FOR DETAILS OF B-B)

DETAIL # 1 - SEE SHEET 4

[NOTE: (8) 8' PANELS & (1) 80' PANEL IN THIS AREA]

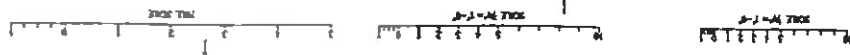
DETAIL # 2 - SEE SHEET 4

[NOTE: (15) 8' PANELS & (1) 3' PANEL IN THIS AREA]

(SEE SHEET 3 FOR DETAILS OF A-A)

DETAIL # 3 - SEE SHEET 4

NOTE: THIS SECTION TO BE SHORTENED 7'-0" FROM ± 92'-5" TO MOVE OUTER ARM OF FLOATING DOCK.



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

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

**PROPOSAL - CONTRACT**

PROPOSAL SUBMITTED TO <b>CUTCHER &amp; ASSOCIATES, INC.</b>	PHONE 561/748-6745 CELL FAX 561/748-6865	DATE 10/20/07
STREET 900 East Indiantown Road - Suite 210	JOB NAME South Breakwater Construction - Lake Park Marina	
CITY, STATE, ZIP CODE Jupiter FL 33477	JOB LOCATION Lake Park FL	

The Vance Construction Co. hereby proposes the following: To furnish labor, equipment and materials to complete the construction of the South Breakwater - Lake Park Marina

QTY	DESCRIPTION	PRICE	UNIT	TOTAL
1	Construction of South Breakwater - Lake Park Marina	\$248,980.00	LS	\$248,980.00
<b>TOTAL</b>				<b>\$248,980.00</b>

- NOTES: 1) The Town of Lake Park shall furnish The Vance Construction Co. a staging/lay-down area at the Lake Park Marina that is accessible via land and water.  
 2) The Vance Construction Co. is not responsible for the relocation of the Bellingham floating docks.  
 3) Rock Clause: If rock is encountered, a cost of \$350 per piling is to be added to total contract.

Complete, as described above, for the Total of: \$248,980.00

**\*\*Two Hundred Forty-Eight Thousand Nine-Hundred Eighty And No/100 Dollars\*\*\***

THE VANCE CONSTRUCTION CO.

ACCEPTED BY:

BY: \_\_\_\_\_  
 SIGNATURE

\_\_\_\_\_  
 (FIRM NAME)

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

\_\_\_\_\_

\_\_\_\_\_  
 Title:

\_\_\_\_\_

NOTE This proposal be withdrawn by us  
 if not accepted within \_\_\_\_\_ days

\_\_\_\_\_  
 Date:

**ACCEPTANCE OF PROPOSAL** The above prices and conditions are satisfactory and hereby accepted. You are authorized to do the work as specified. The above quotation is subject to all terms and conditions of both sides hereof, and becomes a contract when acceptance is signed by an authorized agent of each party. Payment will be made as outlined in the Terms and Conditions of Contract on the reverse side of this proposal.

**TOWN OF LAKE PARK BREAKWATER SCHEDULE**

DESCRIPTION	DAYS				
Procurement of Re-Bar	10-14				
Pre-Cast Piling (Cast Piling On-Site)		15-30			
Pile Installation			30-45		
Panel Installation				45-60	
Batter Pile Installation				45-60	
Tie In Pour Cap				45-60	
Strip Concrete Cap & Job Site Clean Up					75-85

**NOTES:**

- 1) Time line does not include floating dock removal and replacement.
- 2) The Vance Construction Co. shall complete this project no later than 85 days after mobilization.

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

Contract Sum/Agreement Acceptance

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

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

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

For a Total Contract Sum of:

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

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

WITNESS:

Cheryl Blean  
Gayle Jordan

TOWN OF PALM BEACH, FLORIDA

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

Attest: Juanita E. Eubank

(TOWN SEAL)

RECOMMEND APPROVAL

16 July, 2007

H. Paul Brazil  
H. Paul Brazil, Director of Public Works

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

7/18/07, 2007

By: John C. Randolph  
John C. Randolph, Town Attorney

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

38.

#### PERFORMANCE AND PAYMENT BONDS

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

#### 39. RECORD AND AS-BUILT DRAWINGS

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

#### 40. SHOP DRAWINGS, SAMPLES AND SUBMITTALS

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

## CONTRACT

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

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

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

**SEALED BID NO. 2007-11**  
**REACH 7 ARTIFICIAL REEF MITIGATION PROJECT**  
**TOWN OF PALM BEACH, FLORIDA**

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

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

**CONTRACT SUM PROPOSAL**

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





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

THIS AGREEMENT is dated as of the 22<sup>nd</sup> day of May, 2008, and between the Town of Lake Park (hereinafter called OWNER) and The Vance Construction Company, Inc. (hereinafter called CONTRACTOR).

**Article 1. WORK.**

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

*(1) Remove a seven foot portion of an existing floating access dock section at the southeastern end of the marina; (2) relocate the eastern portion of the existing floating access dock seven feet westward; (3) relocate an existing 2,364 SF, consisting of a 12 foot by 189 foot (2,268 SF) floating finger pier, four concrete pilings, and a 4 foot by 24 foot (96 SF) finger pier, seven feet westward to reconnect to the existing floating access dock at the southeastern end of the marina; (4) install a 189 linear foot concrete breakwater along the the southeastern side of the marina along with an 18.5 foot section of the breakwater that terminates the structure at the north end, with 12 inch diameter flushing ports, located on 8 foot centers at a minimum of one foot below the mean low water line; and (5) install 26 batter pilings on the landward side of the proposed breakwater.*

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

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

**The Town of Lake Park Marina - South Breakwater Construction**

**Article 2. ENGINEER.**

The Project has been designed by

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

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



4.2 For Work related to item 3 of the Vance Construction proposal and specific to the punching of rock and as verified and approved by the Engineer: \$350 per pile, with a total punching cost not to exceed \$24,150.00.

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

**Article 5. PAYMENT PROCEDURES.**

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

5.1. Progress Payments; Retainage. OWNER shall make one progress payment on account of the Contract Price for the work on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER as provided in Article 14 of the Standard General Conditions.

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

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

**Article 6. INTEREST.**

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

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

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

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

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

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

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

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

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

#### **Article 8. CONTRACT DOCUMENTS.**

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

- 8.1. This Agreement (pages 1 to 7, inclusive).
- 8.2. Exhibits to this Agreement (2 pages – Proposal for Work from Vance Construction, Inc.).
- 8.3. Performance, Payment, and other Bonds, consisting of \_\_\_\_\_ pages.
- 8.4. Notice to Proceed.
- 8.5. Standard General Conditions (pages 1 to 67 inclusive).
- 8.6 Specifications bearing the title TECHNICAL SPECIFICATIONS, and ENVIRONMENTAL PROTECTION consisting of 2 divisions.
- 8.7 Drawings consist of one set construction plans. These are specific to the work as described previously and are titled as follows:

**THE TOWN OF LAKE PARK MARINA – SOUTH BREAKWATER CONSTRUCTION**

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

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

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

8.9. Intentionally omitted

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

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

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

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

#### **Article 9. MISCELLANEOUS.**

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

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

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

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

9.5. OTHER PROVISIONS (none)

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

This Agreement will be effective on \_\_\_\_\_, 2008 (which is the Effective Date of the Agreement).

OWNER Town of Lake Park

CONTRACTOR Vance Construction

\_\_\_\_\_

Company, Inc.

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

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

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices

Addresses for giving notices

Ms. Maria Davis – Town Manager

Mr. Jim Vance

Town of Lake Park

P.O. Box 4592

535 ParkAve.

West Palm Beach, FL 33402

Lake Park, Florida 33403

License No. \_\_\_\_\_

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

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



**THE TOWN OF LAKE PARK MARINA – SOUTH BREAKWATER CONSTRUCTION**  
**TECHNICAL SPECIFICATIONS**

**1.0 GENERAL:**

The contractor shall comply with all plans and specifications as provided by the ENGINEER and all provisions as detailed in the Florida Department of Environmental Protection Permit No. 50-0140569-007.

**2.0 SITE PREPARATION**

**2.1 SCOPE:**

- A. An uplands location shall be designated and fenced off for use by the CONTRACTOR to form and pour the concrete panels and to stage construction materials including piles, reinforcing steel, etc.
  
- B. All vessels in the vicinity of the work site shall be moved to other locations within the marina to clear the work area and to help avoid potential damage from the construction activities.

**2.2 EXISTING SURFACE AND SUB-SURFACE CONDITIONS:**

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

**2.3 BENCH MARKS AND MONUMENTS:**

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

**2.4 DISPOSAL:**

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

**2.5 REMOVAL OF CONSTRUCTED ITEMS:**

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

**2.6 CLEAN-UP:**

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

**2.7 TREE AND PLANT PROTECTION:**

A. Provide protection for all existing trees and plants, including any vegetation on adjoining property.

**2.8 RESPONSIBILITY:**

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

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

**2.9 SURVEY:**

A. Horizontal control and spot elevation checks by an independent surveyor may be made as directed by the ENGINEER to determine conformance with the Contract Documents.

B. Initial survey checks shall be paid for by the OWNER. Any rechecking required due to non-conformance shall be paid for by the CONTRACTOR.

**3.0 DISPOSAL:**

A. Construction material waste and debris excavated from the site shall be disposed of properly. Location of dumps, and length of haul shall be the responsibility of CONTRACTOR. Disposal to be in COUNTY approved dump site.

**3.1 CONTROL OF WATER:**

A. At all times during work until completion and final acceptance, ample means and equipment shall be provided with which to remove promptly, and dispose of properly, all standing water that would interfere with the Work.

B. Water pumped or drained from the Work shall be disposed of in a suitable manner without damage to adjacent property. Water shall not be discharged onto streets.

- C. Any and all water damage shall be promptly repaired by CONTRACTOR at his expense.

#### **4.0 CONCRETE WORK**

##### **4.1 SCOPE:**

- A. The work consists of furnishing materials, labor and equipment to construct the breakwater panels and cap including steel reinforcement.

##### **4.2 RELATED DOCUMENTS:**

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

##### **4.3 QUALITY ASSURANCE:**

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

##### **4.4 MATERIALS:**

###### **A. FORM MATERIALS:**

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

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

- 2) Forms for Unexposed Finish Concrete: Plywood, lumber, metal, or other acceptable material. Provide lumber dressed on at least 2 edges and one side for tight fit.

3. Form Coatings: Provide commercial formulation form-coating compounds that will not bond with, stain nor adversely affect concrete surfaces, and will not impair subsequent treatments of concrete surfaces.

**B. REINFORCING MATERIALS:**

- 1) Reinforcing Bars: ASTM A 615, Grade 60, deformed.
- 2) Supports for Reinforcement: Bolsters, chairs, spacers, and other devices for spacing, supporting, and fastening reinforcing bars in place. Use wire bar type supports complying with CRSI specifications.

**C. CONCRETE MATERIALS:**

- 1) All concrete to be FDOT Class IV,  $f_c > 5000$  psi. Concrete for breakwater cap to also be in accordance with FDOT Section 346.
- 2) Use one brand of cement throughout project, unless otherwise acceptable to the ENGINEER.
- 3) Fly-Ash: Permitted.
- 4) Normal Weight Aggregates: ASTM C 33, and as herein specified. Provide aggregates from a single source for exposed concrete.  
For exterior exposed surfaces, do not use fine or coarse aggregates containing spalling-causing deleterious substances.
- 5) Local aggregates not complying with ASTM C 33 but which have shown by special test or actual service to produce concrete of adequate strength and durability may be used when accepted by the ENGINEER.
- 6) Water: Drinkable.

**D. RELATED MATERIALS:**

- 1) Liquid Membrane-Forming Curing/Sealing Compound: Liquid type membrane-forming curing compound complying with ASTM C 309, Type I, Class A. Moisture loss not more than 0.055 gr./sq. cm. when applied at 200 sq. ft./gal.

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

- Masterseal"; Master Builders.
- "A-H 3 Way Sealer"; Anti-Hydro Waterproofing Co.
- "Encore"; Euclid Chemical Co.
- "Clear Seal"; A.C. Horn
- "Sealco 309"; Gifford-Hill/American Admixtures.
- "J-20 Acrylic Cure"; Dayton Superior
- "Sure Cure"; A.C. Horn
- "Spartan-Cote"; The Burke Co.
- "Sealkure"; Toch Div. - Carboline.
- "Kure-N-Seal"; Sonneborn-Rexnord.
- "Polyclear"; Upco Chemical/USM Corp.
- "L&M Cure"; L&M Construction Chemicals.
- "Klearseal"; Setcon Industries.
- "LR-152"; Protex Industries.
- "Hardtop"; Gifford-Hill.
- ENGINEER approved alternate

**E. PROPORTIONING AND DESIGN OF MIXES:**

- 1) Design mixes shall be in strict compliance with the FDOT specifications for the product. No deviations are allowed.
  
- 2) Slump Limits: Proportion and design mixes to result in concrete slump at point of placement as follows:

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

**F. CONCRETE MIXING:**

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

**4.5 EXECUTION:**

**A. FORMS:**

- 1) Design, erect, support, brace and maintain formwork to support vertical and lateral, static, and dynamic loads that might be applied until such loads can be supported by concrete structure. Construct formwork so concrete members

and structures are of correct size, shape, alignment, elevation, and position. Maintain formwork construction tolerances complying with ACI 347.

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

**B. PLACING REINFORCEMENT:**

- 1) Comply with Concrete Reinforcing Steel Institute's recommended practice for "Placing Reinforcing Bars", for details and methods of reinforcement placement and supports, and as herein specified.
- 2) Clean reinforcement of loose rust and mill scale, earth, and other materials which reduce or destroy bond with concrete.
- 3) Accurately position, support and secure reinforcement against displacement by formwork, construction, or concrete placement operations. Locate and support reinforcing by plastic chairs, runners, bolsters, spacers, and hangers, as required. Spacers may be fabricated from sections of masonry brick. All spacers shall be no less than 3" in height and must be approved by the ENGINEER prior to use.
- 4) Place reinforcement to obtain at least minimum coverage for concrete protection. Arrange, space and securely tie bars and bar supports to hold reinforcement in position during concrete placement operations. Set wire ties so ends are directed into concrete, not toward exposed concrete surfaces.
- 5) All reinforcing steel shall be sprayed with a 5% solution of phosphoric acid a maximum of 24 hrs. prior to placement of concrete in forms. CONTRACTOR shall notify ENGINEER when spraying of steel is to be performed.

C. PREPARATION OF FORM SURFACES:

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

D. CONCRETE PLACEMENT:

- 1) Pre-placement Inspection: Before placing concrete, inspect and complete formwork installation, reinforcing steel, and items to be embedded or cast-in. CONTRACTOR shall notify ENGINEER of date of concrete placement. CONTRACTOR shall not place concrete prior to receiving written approval from ENGINEER to do so.
- 2) General: Comply with FDOT Specifications for Road and Bridge Construction, current edition, and CRSI "Manual of Standard Practice".
- 3) Deposit concrete continuously or in layers of such thickness that no concrete will be placed on concrete which has hardened sufficiently to cause the formation of seams or planes of weakness. If a section cannot be placed continuously, provide construction joints as herein specified. Deposit concrete as nearly as practicable to its final location to avoid segregation.
- 4) Placing Concrete in Forms: Deposit concrete in forms in horizontal layer not deeper than 24" and in a manner to avoid inclined construction joints. Where placement consists of several layers, place each layer while preceding layer is still plastic to avoid cold joints.
- 5) Consolidate placed concrete by mechanical vibrating equipment supplemented by hand-spading, prodding or tamping. Use equipment and procedures for consolidation of concrete in accordance with ACI 309. Concrete shall be thoroughly worked around reinforcement and embed items.

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

**E. CONCRETE CURING AND PROTECTION:**

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

**F. QUALITY CONTROL TESTING DURING CONSTRUCTION:**

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

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

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

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



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

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

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

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

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

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

## **5.0 CONCRETE PILING AND PANELS**

### **5.1 SCOPE:**

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

### **5.2 SITE CONDITIONS:**

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

**5.3 SUBMITTALS:**

A. Pile order lists, details of equipment and methods proposed for handling and driving piles, concrete batch tickets, reinforcing steel schedules, and the sequence of construction. Driving of piles shall not commence until the ENGINEER'S review of proposed equipment is complete and an authorization to proceed is given. If rock is encountered, the CONTRACTOR must notify the ENGINEER and must receive written direction from the ENGINEER regarding approval to proceed with punching. The ENGINEER will be on-site daily to witness operations and to review the driving/punching log, which must be maintained by the CONTRACTOR on a daily basis. A daily Construction Observation Report shall be completed daily by the ENGINEER and the CONTRACTOR.

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

**5.4 QUALITY ASSURANCE:**

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

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

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

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

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

**5.5 PRODUCT DELIVERY, STORAGE AND HANDLING:**

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

B. All piles shall be marked with surveyors paint at one foot intervals along the entire length. Dimensions shall be marked every 5 feet.

C. Under no circumstances shall the CONTRACTOR cut any pile without written authorization from the ENGINEER.

**5.6 MATERIALS:**

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

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

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

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

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

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

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

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

I. Driving Tips: ASTM A 36 "Standard Specification for Structural Steel," un-galvanized bearing plate and HP stinger tip. Deformed bar anchors shall comply with ASTM A - 496. Welding procedures shall conform to AWS D1.4 and AWS D1.1. Steel Points: ASTM A 27, "Standard

Specification for Mild to Medium-Strength Carbon-Steel Casting for General Application," one-piece castings.

**5.7 CONCRETE MIXTURES:**

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

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

**5.8 FORMWORK:**

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

**5.9 PLACEMENT OF REINFORCING:**

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

**5.10 PLACEMENT OF CONCRETE:**

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

**5.11 CURING:**

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

**5.12 STRIPPING AND HANDLING:**

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

**5.13 FINISHES:**

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

**5.14 PATCHING OF LIFT LOOPS:**

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

**5.15 MANUFACTURING TOLERANCES:**

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

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

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

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

E. Position of handling devices .....+6 in.

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

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

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

**THE TOWN OF LAKE PARK MARINA – SOUTH BREAKWATER CONSTRUCTION**  
**ENVIRONMENTAL PROTECTION PLAN**

**1.0 SCOPE**

1.1 The Work specified in this section consists of providing all equipment, materials and labor and performing all Work required to prevent environmental pollution and damage as a result of construction operations under this Contract. All work shall be performed in accordance with the plans and specifications as prepared by the ENGINEER and in compliance with Environmental Resource Permit No. 50-0140569-007. For the purpose of this specification, environmental pollution and damage are defined as the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance to man; or degrade the utility of the environment for aesthetic, cultural and/or historical purposes. The control of environmental pollution requires consideration of air, water, and land resources. Management of visual aesthetics, solid waste, and noise are associated issues within environmental protection steps.

**2.0 QUALITY CONTROL**

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

**3.0 PERMITS**

3.1 The CONTRACTOR shall comply with all requirements under the terms and conditions set out in all permits obtained by the OWNER applicable to the Work. The FDEP Permit No. 50-0140569-007 is attached.

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

**4.0 SUBCONTRACTORS**

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

**5.0 NONCOMPLIANCE ACTION**

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

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

## **6.0 TURBIDITY CONTROL**

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

**6.2** The CONTRACTOR shall maintain a full water column height turbidity curtain for the duration of the project, as specified in the FDEP Permit.

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

## **7.0 PROTECTION OF ENVIRONMENTAL RESOURCES**

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

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

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

**7.2.2 Protection of Landscape** – Trees, shrubs, grasses, land forms, and other landscape features to be preserved shall be designated by the OWNER and identified by the CONTRACTOR by protective marking, fencing, or other protective and noticeable means.

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

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

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

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

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



## **8.0 WATER RESOURCES PROTECTION**

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

## **9.0 AIR RESOURCES PROTECTION**

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

## **10.0 FISH AND WILDLIFE RESOURCES PROTECTION**

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

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

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

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

**10.2.3** The CONTRACTOR shall report any collision with and, or injury to a manatee to the FWC (1-800-DIAL-FMP) and to the U. S. Fish and Wildlife Service, Jacksonville Office (904/232-2580), for investigation so that the correct immediate action may be taken. During construction of the project, the CONTRACTOR shall maintain a log detailing any manatee sightings, collisions, or injuries should they occur, and following completion of the project the CONTRACTOR shall submit a report to the ENGINEER summarizing these occurrences.

## **11.0 DUST AND NOISE CONTROL**

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

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

## **12.0 POST-CONSTRUCTION CLEANUP**

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

**13.0 ENVIRONMENTAL PROTECTION PLAN**

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

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

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

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44.  
*Substantial Completion*— The Work is complete and ready for final payment, except for minor corrective or "punch list" items not requiring additional installation of piles and panels, casting, formwork, tierods and deadmen . The terms "substantially complete" and "substantially completed" as applied to all or part of the Work, refer to Substantial Completion thereof.
45. *Successful Bidder*—A responsible Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—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 copies of the required certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which the Contractor is required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

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

2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
  - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
  - 2. a preliminary Schedule of Submittals; and
  - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
  - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on

Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

#### **3.01 *Intent***

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

#### **3.02 *Reference Standards***

- A. Standards, Specifications, Codes, Laws, and Regulations
  1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

#### 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.

- B. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

#### 4.02 *Subsurface and Physical Conditions*

##### A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

##### B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon, or make any claim against Owner and/or Engineer, or any of their respective officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. the Contractor’s interpretation of, or conclusion drawn from, any “technical data” or any such other data, interpretations, opinions, or information.

#### 4.03 *Differing Subsurface or Physical Conditions*

##### A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an

emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing and the Contractor's notice shall provide detailed information about the subsurface and/or physical conditions discovered by the Contractor. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so from the Engineer or the Owner.

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

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, may in the sole discretion of the Owner, be equitably adjusted to the extent that the existence of such differing subsurface or physical condition unequivocally causes an quantifiable increase or decrease in Contractor's cost of, or time required for, the performance of the Work; subject, however, to the following:
  - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
  - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
  - a. Contractor knew of the existence of such conditions at the time Contractor submitted its Bid and/or at the time the Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the issuance of a Notice of Award of the Contract by the Owner and/or the Contractor becoming bound under a negotiated contract; or
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas which a reasonable bidder would have conducted as due diligence prior to submitting a Bid or if required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's submitting a Bid and/or executing a contract and/or making a final commitment; or
  - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on whether the Contractor is entitled to a change in the Contract Price or Contract Time or both, and/or the amount of the change, if any, either party may submit a Claim as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. 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 a change is warranted and directly attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents, and provided that the Contractor did not know of, and could not reasonably have been expected to be aware of, or to have anticipated the undisclosed Underground Facility. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim as provided in Paragraph 10.05.



4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. the Contractor's interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for any Hazardous Environmental Conditions created by or as a result of, any materials or substances brought to the Site by the Contractor, Subcontractors, Suppliers, or any of the Contractor's, Subcontractor's, Materials Supplier's employees, guests, invitees, and/or anyone else for whom the Contractor may be held legally liable.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in

writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim as provided in Paragraph 10.05.
- F. If after receipt of such written notice, the Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom the Contractor may be held legally liable. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify the Owner or the Engineer from consequences caused negligence of the party to be indemnified.
- H. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 – BONDS AND INSURANCE

### 5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

#### 5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the state of Florida 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. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- C. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- D. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

#### 5.04 *Contractor's Insurance*

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

Comprehensive General Liability Insurance:

Standard General Conditions

A. Bodily Injury Liability: \$1,000,000.00 per claim/occurrence

B. Property Damage Liability: \$250,000.00

Contractual Liability Insurance:

A. Bodily Injury Liability: 1,000,000.00

B. Property Damage Liability: \$250,000.00

Worker's Compensation and Employer's Liability Insurance:

A. Worker's Compensation: Florida statutory minimum.

B. Employer's Liability: Bodily Injury \$1,000,000.00

Motor Vehicle Liability:

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

A. The required coverages shall provide protection from the claims set forth below and which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
  - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
  - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

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 named insureds (subject to any customary exclusion regarding professional liability) the Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional named insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional named insureds shall provide primary coverage for all claims covered thereby;
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 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. The Contractor waives all rights against the Owner and its officers, directors, members, partners, employees, agents, consultants and subcontractors of for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by any policy of the Owner or Owner's property insurance applicable to the Work;

and, in addition, waives all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

5.06 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.05 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.06.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

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

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

No certificate will be accepted which exculpates the issuer or reduces any rights conferred on the Owner by the above certificates, nor will they be accepted unless the certificates bear a live signature of a direct representative of a company authorized to do business in Florida. No certificate will be accepted unless the person signing the certificate certifies, in a separate letter, his/her exact relationship with the insurance carrier or carriers indicated in the certificate. The Owner may, at its sole discretion, modify or waive any of the foregoing requirements. No contract of insurance containing a "claims made" insuring agreement will be acceptable unless the Contractor offering such insurance to fulfill the requirements of this Contract agrees that each such contract of insurance shall

be renewed for the entire existence of the Contractor, their successors or assigns; and that on termination of such coverage which is not replaced by a similar contract with the required limits of liability, a "tail policy" will be purchased with limits not less than those required by this Contract.

5.08 Acceptance of Bonds and Insurance; Option to Replace

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

## ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

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

6.02 *Labor; Working Hours*

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

### 6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All express and implied warranties, special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable manufacturer and/or Supplier, except as otherwise may be provided in the Contract Documents.

### 6.04 *Progress Schedule*

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

### 6.05 *Substitutes and "Or-Equals"*

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



proposed substitute items. For the purposes of this Paragraph 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 the equivalent or better functions and achieve the equivalent or better results called for by the general design and provide the same express and implied warranties as the required item,
    - b) be similar in substance to that specified, and
    - c) be suited to the same use and/or particular purpose as that specified;

- 2) will state:
    - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
    - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
    - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
  - 3) will identify:
    - a) all variations of the proposed substitute item from that specified, and
    - b) available engineering, sales, maintenance, repair, and replacement services; and
  - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor 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. Prior to subletting work in excess of five percent (5%) of the Contractor's total Bid, the Contractor shall provide the name, address, and license number(s) of the subcontractor who will perform work or provide services to the Contractor. All subcontractors will be required to obtain an occupational license from the Owner. Contractor shall identify all subcontractors and suppliers and others individually responsible for more than five percent (5%) of the total work. No more than forty percent (40%) of the dollar value of the total contract work may be accomplished by subcontractors. The balance of the work must be accomplished by selected Contractor's own forces. Within five (5) days after the notice of award, Contractor shall submit to the Owner a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for which such identification is required on the form List of Subcontractors provided by the Owner. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, person or organization if requested by the Owner. The Owner or Engineer, who after due investigation has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, may before the Notice of Award is given request apparent Successful Bidder to submit an acceptable substitute, without an increase in Bid price. If the Contractor declines to make any such substitution, the Owner may award the contract to another bidder/contractor that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. Declining to make requested substitutions will not constitute grounds for the release of the Bid security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom the Owner or Engineer does not make written objection prior to giving of the Notice of Award will be deemed acceptable to the Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement.

B. The Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
  2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- B. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- C. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- D. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- E. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate written agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same. The Owner may require the Contractor to provide the Owner with copies of all executed contracts between the Contractor and any Subcontractor, Supplier, or other person or entity who is performing any portion of the Work.
- F. The Contractor shall designate, in writing to the Engineer, a superintendent and any necessary assistants satisfactory to the Engineer to receive the Owner and Engineer's instructions. The Superintendent(s) shall not be changed except with the consent of the Engineer, unless the Superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The Superintendent(s) shall follow without delay all instructions of the Owner or the Engineer or their Resident Project Representative in the prosecution and completion of the work and every part thereof. A Superintendent must be on the site at all times during project construction or otherwise make himself available to the Engineer.
- G. The Engineer may direct work change initiatives and or change orders, but the presence of the Engineer shall not relieve the Contractor of responsibility for the proper execution of the work in accordance with the specifications. The Engineer shall have unlimited access to the

project, equipment and materials. The Contractor will be required to furnish, at the request of the Engineer suitable transportation from the shore, to and from any and all attendant equipment. Should the Contractor refuse, neglect, or delay compliance with these requirements, the specific facilities may be furnished and maintained by the Engineer and the cost thereof will be deducted from any amounts due or to become due the Contractor.

#### 6.07 *Patent Fees and Royalties*

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

#### 6.08 *Permits and utilities*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. A Department of Environmental Protection (DEP) permit, No. 50-00140569-005 accompanies the Technical Specifications. The DEP permit constitutes both state and federal review and authorization under the SPGP program. Any other permits and licenses required for the prosecution of the Work shall be secured and paid for by the Contractor, specifically and without limitations. The Contractor shall obtain any and all certifications and/or approvals required by DEP and the U.S. Coast Guard regarding tug and barge and related equipment. Contractor shall be responsible for strict compliance with all permits.
- B. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work. In the event water is made available by the Owner, the Contractor shall take all necessary steps to ensure that such water is properly capped to prevent leaks and waste as determined by the Engineer. Before final acceptance, temporary connections and piping installed by the Contractor shall be removed in a manner satisfactory to the Engineer. All electric current required by the Contractor shall be furnished at his own expense. In the event electricity is made available by the Owner the Contractor shall, at his own expense, install a meter to determine the amount of current used by him and such electricity will be paid for by, or charged to, the Contractor at prevailing rates or at reasonable rates as determined by the Engineer. All temporary lines will be furnished, installed, connected, and maintained by the Contractor in a workmanlike manner satisfactory to the Engineer. All

telephone services required by the Contractor shall be furnished at his own expense. All temporary lines will be furnished, installed, connected, and maintained by the Contractor in a workmanlike manner satisfactory to the Engineer.

#### 6.09 *Laws and Regulations*

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

#### 6.10 *Taxes*

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

#### 6.11 *Use of Site and Other Areas*

- A. *Limitation on Use of Site and Other Areas:*
- B. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work. **Where erecting pipe, drainage structures or other structures in, adjacent to, or over, navigable waters, the Contractor shall observe all regulations and instructions of Federal and other authorities having control over such waters. The Contractor shall not obstruct navigation channels without permission from the proper authority, and provide and maintain navigation lights and signals in accordance with the Federal requirements for the protection of the structure, of false work, and of navigation. In the event of accidental blocking of the navigation channel, the Contractor shall immediately notify the U.S. Coast Guard of the blockage and upon removal of the blockage. When work platforms are indicated in the permit for**

construction, the Contractor must submit work platform construction plans to the appropriate Coast Guard District for approval. Contractor must obtain approval prior to beginning construction on the platform. If the Work includes the excavation of a channel or other underwater areas to a required section, the Contractor shall maintain the section from shoaling or other encroachment until final acceptance of the Work.

1. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
2. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

C. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

D. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

E. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 6.12 *Record Documents*

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

#### 6.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve

Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
  2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C.
- Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Contractor must comply with all federal, state, and local laws, rules and regulations pertaining to construction safety and health standards. The Contractor agrees not to require any worker to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to his health or safety. The Contractor shall remove all debris from the project area prior to final completion in order to prevent injuries.
- D. The Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).



6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). The Contractor shall schedule the submission of shop drawings to allow for a 30-day review period. The review period commences upon the Engineer's receipt of the valid submittal or resubmittal and terminates upon the transmittal of the submittal back to the Contractor. A valid submittal includes all the minimum requirements outlined in above. The Contractor shall allow for a 20-day review time for resubmittals.
- B. Each submittal will be identified as Engineer may require.
  - 1. *Shop Drawings:*
    - a. Submit number of copies specified in the General Requirements. The Contractor shall furnish at least two clearly legible photographic or xerographic copies of all shop drawings that are necessary to complete the structure in compliance with the design shown on the plans. The Contractor shall prepare all shop drawings using the same units of measure as those used in the Owner's plans. The Contractor shall use sheets no larger than 24 by 36 inches [610 by 915 mm]. Consecutively number each sheet in the submittal series, and indicate the total number in the series (i.e., 1 of 12, 2 of 12, 12 of 12). The Contractor shall include on each sheet the following items as a minimum requirement: the Owner's Contract Number, drawing title and number, a title block showing the names of the fabricator or producer and the Contractor for which the work is being done, the initials of the person(s) responsible for the drawing, the date on which the drawing was prepared, the location of the item(s) within the project, the Contractor's approval stamp

with date and initials, and, when applicable, the signature and embossed seal of the Specialty Engineer. A re-submittal will be requested when any of the required information is not included.

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

2. *Samples:*

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

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

D. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:
  - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
  - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
  - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop

Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

E. *Engineer's Review:*

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

F. *Resubmittal Procedures:*

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

6.18 *Continuing the Work*

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

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor unconditionally warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is

not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;
2. recommendation by Engineer or payment by Owner of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner or Owner's agents.

#### 6.20 *Indemnification*

- A. Pursuant to Section 725.06, Fla. Stat., the specific consideration for the indemnification provided by the Contractor is the sum of \$10.00 paid by the Owner to the Contractor as an additional consideration. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, defend, and hold harmless, the Owner and Engineer, and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of, or relating to, the performance of the Work, including but not limited to, property damage and the loss of use resulting therefrom, by any negligent act or omission of the Contractor, and/or the Contractor's agents, employees, invitees, guests, contractors, Subcontractors, Suppliers, and/or any other individual or entity who performs any of the Work and/or any other person or entity for whose acts any of them may be liable. The Contractor shall indemnify, defend, and save harmless the Owner, its agents, or employees from and against all claims, demands, actions, suits, damages losses, expenses, costs, including attorney's fees, and judgments of every kind and description arising from, based upon, or growing out of the violation of any Federal, State, county or city law, by-law, ordinance of regulation by the Contractor, its agents, trainees, invitees, servants or employees. The Contractor further acknowledges that it is solely responsible for ensuring the safety of the premises to protect its employees, subcontractors, invitees, licensees and all other persons during the course of the work, and agrees to hold and save the Owner harmless against all claims involving alleged negligence by the Owner in failing to adequately ensure the safety of the site or otherwise ensure compliance with the Contract. The Contractor shall indemnify, defend, save and hold harmless the Owner, its officers, agents, and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property, or other work in connection with the performance of the Contract. The Contractor shall pay all losses, claims, liens, settlements, or judgments of any nature whatsoever in connection with the foregoing indemnification, including but not limited to,

reasonable attorney's fees (including appellate attorneys' fees and costs). The Owner reserves the right to select its own counsel to conduct any defense in any such proceedings and all costs and fees associated therewith shall be the responsibility of the Contractor under the indemnification agreement set forth herein. Nothing contained herein is intended nor shall it be construed to waive Owner's rights and immunities under the common law or Florida Statute 768.28, as amended from time to time.

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification 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 therefore, 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 therefore as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

### 7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
  2. the specific matters to be covered by such authority and responsibility will be itemized; and
  3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

### 7.03 *Legal Relationships*

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

## ARTICLE 8 – OWNER'S RESPONSIBILITIES

### 8.01 *Communications to Contractor*

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

### 8.02 *Replacement of Engineer*

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

### 8.03 *Furnish Data*

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

### 8.04 *Pay When Due*

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

### 8.05 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws

and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents..

8.06 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed 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. Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. The Resident Project Representative employed by the Engineer shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. A Resident Project Representative is not authorized to revoke, alter, or waive any provision of the Contract. The Resident Project



Representative is not authorized to issue instructions contrary to the Drawings and Specifications or to act as foreman for the Contractor.

9.04 *Authorized Variations in Work*

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

9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work 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 for the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents

pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to Engineer in writing.

- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.08 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

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

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

**ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

10.01 *Authorized Changes in the Work*

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

10.02 *Unauthorized Changes in the Work*

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

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
  - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
  - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

#### 10.04 *Notification to Surety*

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

#### 10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
  1. deny the Claim in whole or in part;
  2. approve the Claim; or
  3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### *11.01 Cost of the Work*

*A. Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

(a) Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. The Contractor will receive payment for actual costs of direct labor and burden for the additional or unforeseen work. Labor includes foremen actually engaged in the work; and will not include project supervisory personnel nor necessary on-site clerical staff, except when the additional or unforeseen work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. Compensation for project supervisory personnel, but in no case higher than a Project Manager's position, shall only be for the pro-rata time such supervisory personnel spent on the contract. In no case shall an officer or director of the Company, nor those persons who own more than 1% of the Company, be considered as project supervisory personnel, direct labor or foremen hereunder. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to

the extent authorized by Owner. At the Pre-construction conference, the Contractor shall certify to the Engineer the following:

- A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the contract
- Actual Rate for items listed above
- Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and;
- Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

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

(b) Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. For materials accepted by the Engineer and used on the project, the Contractor will receive the actual cost of such materials incorporated into the work, including Contractor paid transportation charges (exclusive of equipment as hereinafter set forth). For supplies reasonably needed for performing the work, the Contractor will receive the actual cost of such supplies. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

(c) Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

1. Supplemental costs including the following:

- (b) Costs, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and costs, less market value, of such items used but not consumed which remain the property of Contractor.
- (c) For any machinery or special equipment (other than small tools), including fuel and lubricant, the Contractor will receive 50% of the "Rental Rate Blue Book" for the actual time that such equipment is in operation on the work, and 25% of the "Rental

Rate Blue Book” for the time the equipment is directed to standby and remain on the project site, to be calculated as indicated below. The equipment rates will be based on the latest edition (as of the date the work to be performed begins) of the “Rental Rate Blue Book for Construction Equipment” or the “Rental Rate Blue Book for Older Construction Equipment,” whichever is applicable, as published by Machinery information Division of PRIMEDIA Information, Inc. (version current at the time of Bid), using all instructions and adjustments contained therein and as modified below. On all projects, the Engineer will adjust the rates using regional adjustments and Rate Adjustment Tables according to the instructions in the Blue Book.

Allowable Equipment Rates will be established as set out below:

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

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

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

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

1. Payroll costs and other compensation of Contractor’s officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the

Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

## 11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:*
1. Contractor agrees that:
    - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
    - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.



C. *Contingency Allowance:*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the Unit Price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each Unit Price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
  1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  2. there is no corresponding adjustment with respect to any other item of Work; and
  3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

**ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

12.01 *Change of Contract Price*

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

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (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. The parties anticipate that delays may be caused by or arise from any number of events during the term of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the Engineer, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, special events, suspension of Contract time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.
- B. After giving the Engineer notice of intent to file a claim for extra work or delay, the Contractor must keep daily records of all labor, material and equipment costs incurred for operations affected by the extra work or delay. These daily records must identify each operation affected by the extra work or delay and the specific locations where work is affected by the extra work or delay, as nearly as possible. The Engineer may also keep records of all labor, material and equipment used on the operations affected by the extra work or delay. The Contractor shall, once a notice of intent to claim has been timely filed, and not less than weekly thereafter as long as appropriate, provide the Engineer a copy of the Contractor's daily records and be likewise entitled to receive a copy of the Owner's daily records. The copies of daily records to be provided hereunder shall be provided at no cost to the recipient. When submitting any claim, the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what the Contractor in good faith believes to be the Owner's liability. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.
- C. If the Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times may be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

D.

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

- E. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor may be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- F. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project. The parties agree that for any claim the Owner will not have liability for the following items of damages or expense:

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

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

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

### *13.01 Notice of Defects*

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

### *13.02 Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and

testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

### 13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. The Contractor shall furnish the Engineer with every reasonable facility for ascertaining whether the work performed and materials used are in accordance with the requirements and intent of the Contract Documents. If, during or prior to construction operations, the Engineer fails to reject defective work or materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject in no way prevents the later rejection when such defect is discovered, or obligates the Owner to final acceptance. The Owner is not responsible for losses suffered due to any necessary removals or repairs of such defects.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
  - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
  - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
  - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

### 13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim as provided in Paragraph 10.05.

### 13.05 *Owner May Stop the Work*

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

### 13.06 *Correction or Removal of Defective Work*

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



13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations 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 the Contractor fails or refuses to promptly comply with the Owner's instructions, or fails or refuses to remove and correct any defective materials used or Work performed, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of the Contract within the time indicated in writing, the Engineer has the authority to repair, remove, or correct the unacceptable or defective materials or Work as necessary, all at the Contractor's expense. The Owner will obtain payment for all expenses incurred (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or the removal and replacement (including but not limited to all costs of repair or replacement of work of others), by deducting the expenses from any moneys due or which may become due the Contractor, or by charging such amounts against the Contract bond.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

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

13.09 *Owner May Correct Defective Work*

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

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

## ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

### 14.01 *Schedule of Values*

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

### 14.02 *Progress Payments*

#### A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. There will be one progress payment and one final payment for the Contract. The progress payment will be made after completion of mobilization and installation of a minimum of 120 linear feet of seawall in accordance with the Construction Drawings and Technical Specifications, in such amount as is approved by the Engineer, not to exceed twenty-five percent (40%) of the Contract Price. Final payment will be made in accordance with Article 14. Completion of mobilization, for purposes of the progress payment, shall require that the Contractor have all needed equipment and supplies on site and in operation to the extent of successfully installing 120 linear feet of seawall to the satisfaction of the Engineer. The Owner shall have the right to hold retainage as security for payment by Contractor to Owner of any sum for which Contractor may be liable to indemnify Owner, arising out of any violation of any applicable permit or any damage or other claim arising from Contractor's performance of the Work. The amount of such retainage shall be such amount as Owner determines to be appropriate security for such indemnity, up to 10% of the Contract Price, or the total potential fines which may be imposed by any and all agencies for any permit violations. Such retainage shall be held by Owner, without interest, until all indemnities have been paid, or Owner is otherwise reasonably assured that no further claims will be made for which Contractor would be obligated to indemnify Owner under this Agreement.
- 2.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

*B. Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

- d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
  - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

*C. Payment Becomes Due:*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

*D. Reduction in Payment:*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
  - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - c. there are other items entitling Owner to a set-off against the amount recommended; or
  - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the

amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

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

14.04 *Contractor's Warranty of Title*

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

14.05 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall schedule and conduct an inspection of the Work to determine the status of completion. The purpose of this inspection will be to develop a final list of incomplete or deficient work, and the necessary completion of which will render complete, satisfactory, and acceptable the construction services purchased by the Owner. The Contractor's Project Manager shall schedule the attendance of any required representatives of Subcontractors and/or Suppliers providing materials and services for the Work. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items ("punch list") to be completed or corrected before final payment. This list of incomplete or deficient work is herein after referred to as "punch list work.". The determination by the Engineer as to the

items identified in the punch list shall be conclusive and shall not 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 Engineer was without any reasonable and good faith basis. The failure of the Engineer, to include any corrective work or pending items not yet completed on the punch list does not alter the responsibility of the Contractor to complete all of the construction services pursuant to the Contract. All items that require correction under the Contract and that are identified after the preparation of the punch list remain the obligation of the Contractor as defined by the Contract. For construction projects having an estimated cost of less than \$10 million, the punch list will be completed by the Contractor within 30 calendar days of substantial completion. For construction projects having an estimated cost of \$10 million or more, the punch list will be completed by the Contractor within 30 calendar days of substantial completion, unless extended by the Contract not to exceed 60 calendar days. In the event the Contractor's Project Manager or any required representatives of Subcontractor or Suppliers fail to attend the scheduled punch list inspection, the Engineer will continue the scheduled inspection and develop the punch list. The Contractor will be provided a copy of the punch list at the address provided for written notice.

- C. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or the punch list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised punch list 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.

#### 14.06 *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.

#### 14.07 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. Final Payment
- C. *Application for Payment:*
  1. After Contractor has, in the opinion of Engineer, satisfactorily completed all punch list corrections and all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
  2. The final Application for Payment shall be accompanied (except as previously delivered) by:
    - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
    - b. consent of the surety, if any, to final payment;



- c. a list of all Claims against Owner that Contractor believes are unsettled; and
  - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

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

- E. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. The final acceptance date will be the date that which warranty provisions and the time limitations for latent defects commence. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

F. *Payment Becomes Due:*

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

14.08 *Final Completion Delayed*

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

under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

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

**ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

15.01 *Owner May Suspend Work*

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

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. If the Contractor persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule, as adjusted from time to time, and the Contractor's failure to prosecute the Work at a rate which, in the discretion of Engineer, would not result in completion of the Work within the time allowed for Substantial Completion);
  2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Contractor's repeated disregard of the authority of Engineer; or
  4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
  2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
  3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

### 15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in

connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### 15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

### ARTICLE 16 – DISPUTE RESOLUTION

#### 16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
  2. agrees with the other party to submit the Claim to another dispute resolution process; or
  3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

## ARTICLE 17 – MISCELLANEOUS

### 17.01 *Giving Notice*

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

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

- B. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
  2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### 17.02 *Computation of Times*

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

### 17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

- A. This Contract is to be governed by the laws of the state of Florida.

17.06 *Headings*

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

# TAB 2

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

Meeting Date: May 21, 2008

Agenda Item No. *Tab 2*

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

**SUBJECT:** Resolution to Revise the Town of Lake Park Classification and Pay Plan to Amend the Job Description for the Position of Recreation Director

**RECOMMENDED MOTION/ACTION:** Approval of Resolution.

Approved by Town Manager *W. Davis* Date: *5/14/08*  
*Eric Dowdy* Director Parks & Rec *5-14-08*  
 Name/Title Date of Actual Submittal

<b>Originating Department:</b>  <b>Parks &amp; Recreation</b>	Costs: \$ 0  Funding Source: Acct. #	<b>Attachments:</b>  <b>Copy of Resolution and Job Description</b>
Department Review: <input checked="" type="checkbox"/> Parks & Recreation <i>GD</i> <input type="checkbox"/> Community Development <input type="checkbox"/> Finance	<input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Human Resources _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case _____:  Please initial one.



**Summary Explanation/Background:**

Currently, a job description exists in the Town of Lake Park Classification and Pay Plan entitled Community Affairs Director. The purpose of this item is to amend this job description to more accurately reflect the duties and requirements of this position, and to change the title to Recreation Director. The purpose is also to change the title of the department for this position from Community Affairs to Parks and Recreation Department.

The salary range and the current salary for this position will remain the same. Therefore, no additional financial burden will be placed on the budget of the Town of Lake Park as a result of this action.

**RESOLUTION 27-05-08**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, REVISING THE TOWN CLASSIFICATION AND PAY PLAN TO AMEND THE JOB DESCRIPTION FOR THE POSITION OF RECREATION DIRECTOR; PROVIDING FOR THE PUBLICATION OF AN UPDATED CLASSIFICATION AND PAY PLAN; PROVIDING FOR AN EFFECTIVE DATE.**

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

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

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

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

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

**Section 2.** The Classification and Pay Plan is revised to amend the job description for the position of Recreation Director and to change the name of the department for this position to Parks and Recreation Department. A copy of the amended job description for this position is attached hereto as Exhibit A.

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

<b>RECREATION DIRECTOR</b>
----------------------------

**CLASSIFICATION CODE:** 180  
**PAY GRADE:** 18  
**DEPARTMENT:** PARKS AND RECREATION

**CHARACTERISTICS OF THE CLASS:**

Under the administrative direction of the Town Manager, responsible for the implementation and direction of a comprehensive year-round recreation program including youth and adult activities, all community events, and the management of Town rental facilities. Performs related duties as directed. This is an exempt position.

**EXAMPLES OF ESSENTIAL FUNCTIONS:**

The list of essential functions, as outlined herein, is intended to be representative of the tasks performed within this classification. It is not necessarily descriptive of all job duties. The omission of a job duty does not preclude management from assigning duties not listed herein if such duties are a logical assignment to the Recreation Director position.

**EXAMPLES OF ESSENTIAL FUNCTIONS:**

- Assume full management responsibility for planning, directing and supervising the activities of the Recreation Department; develop and implement departmental operating policies and procedures; establish program goals and objectives; develop strategies and evaluate operational effectiveness
- Prepare and administer departmental budget, control expenditures, evaluate needs and recommend staffing levels, materials, equipment and capital improvements; oversee requisitioning of all equipment and supplies, and materials
- Implement the planning of new parks, playgrounds and construction and maintenance of these facilities
- Coordinate the Town recreation program with other City departments and outside organizations such as schools and various community-based organizations; serve as liaison between the Recreation Department and the community
- Coordinate Town events; act as event emcee as needed
- Prepare press releases, flyers and advertisements for all recreational activities, programs and special events; determine and coordinate all aspects of event planning including the site plan, vendors, entertainment and all event logistics

- Coordinate and oversee Town bus trips; register participants; drive Town bus as needed
- Coordinate and oversee the rental of Town facilities
- Maintain financial records and accounts for monies received and submit reports to the Finance Department; prepare requisitions, field purchase orders, and department payroll
- Manage, train, motivate and evaluate departmental staff; review progress and direct changes as needed
- Represent the Town at various community events, meetings and conferences
- Perform other duties as assigned

**REQUIREMENTS:**

**A. Education and Experience:**

Bachelor's degree in sports management, marketing, education or physical education, or related field from accredited college or university; supplemented by five (5) years of progressively responsible experience in developing and implementing community-wide recreation programs and events, or any combination of related training and experience. Membership in the Florida Recreation and Parks Association required. Must have valid Florida CDL Class C Drivers License.

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

- Knowledge of community recreation needs and resources
- Knowledge of the principles and practices of office management, work organization and supervision
- Knowledge of the principles and practices of modern parks and recreation programs
- Ability to plan, organize, coordinate, implement and manage a comprehensive parks and recreation program
- Ability to communicate effectively, verbally and in writing
- Ability to select, manage, train and evaluate assigned staff
- Skill in the operation of general office equipment

**PHYSICAL REQUIREMENTS:**

Task involves frequent walking; standing; lifting and carrying objects of moderate to heavy weight; and/or the operation of vehicles, office, computer keyboard, or hand tools in which manipulative skills and hand-eye coordination are important ingredients of safe and/or productive operations.

**ENVIRONMENTAL REQUIREMENTS:**

Task may require infrequent exposure to adverse environmental conditions.

**SENSORY REQUIREMENTS:**

Task requires color, sound and form perception.

**BLOODBORNE PATHOGENS:**

Category 11 – Moderate to Minimal Risk Exposure.

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

# TAB 3

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

Meeting Date: May 21, 2008

Agenda Item No. *Tab 3*

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

**SUBJECT:** Resolution to Revise the Town of Lake Park Classification and Pay Plan to Provide for the Position of Camp Counselor

**RECOMMENDED MOTION/ACTION:** Approval of Resolution.

Approved by Town Manager *W. J. Lewis* Date: *5/14/08*  
*G. J. Daulton* Director Parks & Rec *5-14-08*  
 Name/Title Date of Actual Submittal

<b>Originating Department:</b>  <b>Parks &amp; Recreation</b>	Costs: \$ 0  Funding Source: Acct. #	<b>Attachments:</b>  Copy of Resolution and Job Description
<b>Department Review:</b> <input checked="" type="checkbox"/> <b>Parks &amp; Recreation</b> <i>GD</i> <input type="checkbox"/> Community Development <input type="checkbox"/> Finance	<input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Human Resources _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case _____:  Please initial one.

**Summary Explanation/Background:**

The purpose of this item is to add to the Town Classification and Pay Plan the position of Camp Counselor, which has existed each year and is staffed on a part-time seasonal basis. The pay range for this position will remain the same. Therefore, no additional financial burden will be placed on the Town of Lake Park as a result of this action.



**RESOLUTION 28-05-08**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, REVISING THE TOWN CLASSIFICATION AND PAY PLAN TO PROVIDE FOR THE POSITION OF CAMP COUNSELOR; PROVIDING FOR THE PUBLICATION OF AN UPDATED CLASSIFICATION AND PAY PLAN; PROVIDING FOR AN EFFECTIVE DATE.**

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

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

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

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

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

**Section 2.** The Classification and Pay Plan is revised to add the position of Camp Counselor and corresponding job description. A copy of the job description for this position is attached hereto as Exhibit A.

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

## CAMP COUNSELOR

**CLASSIFICATION CODE:** 181  
**PAY GRADE:**  
**DEPARTMENT:** PARKS AND RECREATION

### **GENERAL CHARACTERISTICS OF THE CLASS:**

Under the general supervision of the Recreation Director, responsible for leading, directing and assisting youth enrolled in summer camp group activities, educational programs, arts and crafts, team sports, off site field trips, games and special events. Serves as a positive role model for campers and ensures a safe, diverse and fun environment for youth in a day camp setting. Performs related duties as directed. This is a non-exempt position.

### **EXAMPLES OF ESSENTIAL FUNCTIONS:**

The list of essential functions, as outlined herein, is intended to be representative of the tasks performed within this classification. It is not necessarily descriptive of all job duties. The omission of a job duty does not preclude management from assigning duties not listed herein if such duties are a logical assignment to the Camp Counselor position.

- Assist Recreation Department staff in the supervision of campers during all summer camp activities
- Assist Recreation Department staff in enforcing summer camp safety rules and carrying out established procedures for ensuring the health and safety of summer camp participants
- Guide individual campers in participating successfully in all aspects of summer camp activities
- Assume responsibility for coordinating workshops, hikes or other special activities as assigned
- Assist Recreation Department staff in leading activities as assigned
- Assist in maintaining good public relations with campers' parents or guardians
- Perform other duties as assigned

### **REQUIREMENTS:**

Graduation from an accredited high school or GED or be enrolled in an accredited high school or GED program. One year of experience as a recreation volunteer preferred. Must obtain First Aid and CPR Heartsaver certification prior to the commencement of summer camp. Must be able to work a varied work schedule, including some weekends and holidays, during the period of June 1<sup>st</sup> through August 1<sup>st</sup> of each year.

### **PHYSICAL REQUIREMENTS:**

Task involves frequent walking; standing; lifting and carrying objects of moderate to heavy weight; and/or the operation of vehicles, office, computer keyboard, or hand tools in which manipulative skills and hand-eye coordination are important ingredients of safe and/or productive operations.

**ENVIRONMENTAL REQUIREMENTS:**

Task may require infrequent exposure to adverse environmental conditions.

**SENSORY REQUIREMENTS:**

Task requires color, sound and form perception.

**BLOODBORNE PATHOGENS:**

Category 11 – Moderate to Minimal Risk Exposure.

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

# TAB 4

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

Meeting Date: May 21, 2008

Agenda Item No. *Tab 4*

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

**SUBJECT:** Resolution to Revise the Town of Lake Park Classification and Pay Plan to Provide for the Position of Recreation Bus Driver

**RECOMMENDED MOTION/ACTION:** Approval of Resolution.

Approved by Town Manager *W. Davis* Date: *5/14/08*  
*G. Dwyer* Director Parks & Rec *5-14-08*  
 Name/Title Date of Actual Submittal

<b>Originating Department:</b>  <b>Parks &amp; Recreation</b>	Costs: \$ 0  Funding Source: Acct. #	<b>Attachments:</b>  <b>Copy of Resolution and Job Description</b>
Department Review: <input checked="" type="checkbox"/> Parks & Recreation <i>GD</i> <input type="checkbox"/> Community Development <input type="checkbox"/> Finance	<input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Human Resources _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case _____:  Please initial one.

**Summary Explanation/Background:**

The purpose of this item is to add to the Town Classification and Pay Plan the position of Recreation Bus Driver, which has been staffed each year on a part-time seasonal basis under the position title of Camp Counselor. The pay range for this position, which is that the same pay range as budgeted for the Camp Counselor position, will remain the same. Therefore, no additional financial burden will be placed on the Town of Lake Park as a result of this action.

**RESOLUTION 29-05-08**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, REVISING THE TOWN CLASSIFICATION AND PAY PLAN TO PROVIDE FOR THE POSITION OF RECREATION BUS DRIVER; PROVIDING FOR THE PUBLICATION OF AN UPDATED CLASSIFICATION AND PAY PLAN; PROVIDING FOR AN EFFECTIVE DATE.**

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

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

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

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

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

**Section 2.** The Classification and Pay Plan is revised to add the position of Recreation Bus Driver and corresponding job description. A copy of the job description for this position is attached hereto as Exhibit A.

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

## RECREATION BUS DRIVER

**CLASSIFICATION CODE:** 182  
**PAY GRADE:**  
**DEPARTMENT:** PARKS AND RECREATION

### GENERAL CHARACTERISTICS OF THE CLASS:

Under the general supervision of the Recreation Director, responsible for driving the Town bus during summer camp and Town sponsored events and bus trips. Performs related duties as directed. This is a non-exempt position.

### EXAMPLES OF ESSENTIAL FUNCTIONS:

The list of essential functions, as outlined herein, is intended to be representative of the tasks performed within this classification. It is not necessarily descriptive of all job duties. The omission of a job duty does not preclude management from assigning duties not listed herein if such duties are a logical assignment to the Recreation Bus Driver position.

- Operate the Town bus during the Town of Lake Park summer camp program, for Town sponsored events and bus trips
- Check the operating condition of the Town bus before commencing on each trip
- Immediately report any defects to the Recreation Director
- Ensure that transported children observe all regulations prescribed by the Town of Lake Park and the State of Florida
- Maintain orderly conduct on the bus and ensure that children adhere to safety practices and procedures
- Keep the interior of the bus clean and neat
- Serve as a positive role model and refrain from using harsh or derogatory language when speaking to children and adults
- Perform other duties as assigned

### REQUIREMENTS:

Graduation from an accredited high school or GED, plus valid Florida CDL Class C Drivers License. Must present a certified driving record acceptable to the Town. Must



obtain First Aid and CPR Heartsaver certification prior to the commencement of summer camp, and be able to work a varied work schedule, including some weekends and holidays.

**PHYSICAL REQUIREMENTS:**

Task involves frequent walking; standing; lifting and carrying objects of moderate to heavy weight, and the operation of vehicles or hand tools in which manipulative skills and hand-eye coordination are important ingredients of safe and/or productive operations.

**ENVIRONMENTAL REQUIREMENTS:**

Task may require infrequent exposure to adverse environmental conditions.

**SENSORY REQUIREMENTS:**

Task requires color, sound and form perception.

**BLOODBORNE PATHOGENS:**

Category 11 – Moderate to Minimal Risk Exposure.

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

# TAB 5

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

Meeting Date: May 21, 2008

Agenda Item No. *Tab 5*

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

**SUBJECT:** Amendment to resolution 50-07-07 that establishes building and signage fees. This resolution is to add window signage as a separate fee category and establish a reduced fee of \$50 for window signage per business.

RECOMMENDED MOTION/ACTION: Approval,

Approved by Town Manager

*W. Davis*

Date:

*5/14/08*

<b>Originating Department:</b> Community Development	Costs: \$ N/A  Funding Source:  Acct. #	Attachments:
<b>Department Review:</b> <input type="checkbox"/> Town Attorney KER 051108 <input type="checkbox"/> Community Affairs <input checked="" type="checkbox"/> Community Development	<input checked="" type="checkbox"/> Finance <input type="checkbox"/> Fire Dept <input type="checkbox"/> Library <input type="checkbox"/> PBSO	<input type="checkbox"/> Personnel <input type="checkbox"/> Public Works <input type="checkbox"/> Town Clerk <input type="checkbox"/> Town Manager
<b>Advertised:</b> Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case _____:  Please initial one.

**Summary Explanation/Background:** this resolution establishes a separate fee category and a lower fee for window signage. Businesses now pay a \$100 fee per sign. Each business would now pay a reduced \$50 fee for window signage that appears in the window or windows of the business along the street frontage. In practice, the applicant would submit a drawing of the front of the business and the placement of all the proposed lettering and graphics. If the proposal meets the regulations the final approved drawing would be kept on file and the applicant would only pay one \$50 fee that would cover all the windows. A major change to the layout of the signage in the window would require another fee as this would be considered a new sign. This is consistent with current practice for other signage.

**RESOLUTION NO. 30-05-08**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING THE TOWN'S PERMIT FEE SCHEDULE TO ADD ADDITIONAL PERMIT FEES FOR SIGN PERMITS; PROVIDING FOR THE REPEAL OF RESOLUTIONS IN CONFLICT; 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**, in accordance with the authority provided by the Town Code and state law, the Town Commission has established, by Resolution, a schedule of fees ("Fee Schedule") for the cost of permits issued by the Town; and

**WHEREAS**, Chapter 70 of the Town Code regulating signage within the Town was recently amended to require permits for certain types of permitted signs allowed to be erected within the commercial and industrial zoning districts within the Town; and

**WHEREAS**, based upon the amendments to the Town's Sign Code regulations as set forth in Chapter 70 of the Town Code, it is therefore necessary to establish permit fees pertaining to the signs for which sign permits are required and will be issued by the Town; and

**WHEREAS**, Town staff has recommended that the Fee Schedule set forth herein, be amended to include additional permit fees to be charged for the issuance of sign permits in accordance with the recent text amendments to Chapter 70 of the Town Code.

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

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

**Section 2.** The Permit Fee Schedule is hereby amended to read as follows:

**BUILDING PERMIT FEES:**

The Permit Fee Schedule shall be based on total valuation as follows:

Minimum Permit Fee up to \$ 2,499.00 in value .....	\$60.00
\$ 2,500.00 - \$ 99,999.00 .....	\$60.00 PLUS - 2.0 %
\$ 100,000.00 - \$ 999,999.00 .....	\$60.00 PLUS - 1.5 %
\$ 1,000,000 and up.....	\$60.00 PLUS -1.25 %

**MOVING PERMIT FEES:**

For the moving of any building or structure exceeding 500 Sq Ft the Permit Fee shall be:.....\$500.00

**DEMOLITION PERMIT FEES:**

For the demolition of any building or structure exceeding 500 sq ft the Permit Fee shall be:.....\$200.00 for the first 500 sq feet with the remainder @ \$1.00 / 500 sq ft

**RE-INSPECTION FEES:**

For the first re-inspection..... \$50.00  
For second and subsequent re-inspections.....\$75.00

**CONTRACTOR REGISTRATION FEES:**

With Palm Beach County registration with a "W" designation.....\$2.00  
All Other Contractors.....\$10.00

**SIGN PERMIT FEES:**

Minimum Permit Fee up to \$ 3,000.00 in value .....\$100.00  
\$ 3,000.00 and up in value.....\$200.00  
Window Signage (per store window frontage).....\$50.00

**Section 3.** Repeal of laws in conflict. All Resolutions or parts of Resolutions in conflict with this Resolution are hereby repealed to the extent of the conflict.

**Section 4.** Effective date. This Resolution shall take effect immediately upon adoption.

# TAB 6

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

Meeting Date: May 21, 2008

Agenda Item No. *Tab 6*

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

**SUBJECT:** Resolution to appoint a special magistrate as per section 9-35 of the Code.

RECOMMENDED MOTION/ACTION:

Approved by Town Manager *W. J. Davis* Date: *5/14/08*

<b>Originating Department:</b> Community Development	Costs: \$ N/A Funding Source: Acct. #	Attachments:
<b>Department Review:</b> <input checked="" type="checkbox"/> Town Attorney <i>AB</i> <input type="checkbox"/> Community Affairs <input checked="" type="checkbox"/> Community Development	<input type="checkbox"/> Finance <input type="checkbox"/> Fire Dept <input type="checkbox"/> Library <input type="checkbox"/> PBSO	<input type="checkbox"/> Personnel <input type="checkbox"/> Public Works <input type="checkbox"/> Town Clerk <input type="checkbox"/> Town Manager
<b>Advertised:</b> Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ OR Not applicable in this case _____ Please Initial one.

**Summary Explanation/Background:** The special magistrate is appointed by the Town Commission for a one year term. The code allows for reappointment if the Commission desires to reappoint the sitting magistrate. The present magistrate has been in place approximately 3 years. This is a request to appoint a new special magistrate to hear code cases. Staff is suggesting the appointment of a new special magistrate in order to provide a fresh approach to the job.

**RESOLUTION NO. 31-05-08**

**A RESOLUTION OF THE TOWN COMMISSION OF  
THE TOWN OF LAKE PARK, FLORIDA  
APPOINTING A SPECIAL MAGISTRATE FOR THE  
TOWN; AND PROVIDING FOR AN EFFECTIVE  
DATE.**

**WHEREAS**, the Town utilizes a qualified attorney to act as a Special Magistrate for all of its code violation cases; and

**WHEREAS**, the Town has determined that Carolyn Ansay is duly qualified, and she has agreed to serve by appointment as a Special Magistrate for the Town.

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

**Section 1.** Carolyn Ansay is hereby appointed as a magistrate for the Town of Lake Park, effective upon taking the oath of office.

**Section 2.**

This Resolution shall take effect immediately upon its adoption.



# DORAN, WOLFE, ANSAY & KUNDID

ATTORNEYS

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS

444 SEABREEZE BOULEVARD, SUITE 800  
DAYTONA BEACH, FLORIDA 32118

CAROLYN S. ANSAY  
MICHAEL CIOCCHETTI  
THEODORE R. DORAN  
AUDRIE M. HARRIS  
JASON R. HAWKINS  
MICHAEL A. KUNDID  
AARON R. WOLFE

**DAYTONA BEACH OFFICE:**  
POST OFFICE BOX 15110  
DAYTONA BEACH, FL 32115  
(386) 253-1111  
FACSIMILE (386) 253-4260

**WEST PALM BEACH OFFICE:**  
777 S. FLAGLER DRIVE  
SUITE 800 WEST TOWER  
WEST PALM BEACH, FL 33401  
(561) 802-3334

TOLL FREE (888) 301-3166  
EMAIL [lawfirm@doranlaw.com](mailto:lawfirm@doranlaw.com)

REPLY TO:  
*West Palm Beach*  
[cansay@doranlaw.com](mailto:cansay@doranlaw.com)

May 12, 2008

**RECEIVED**

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

**MAY 14 2008**

*Town Of Lake Park,  
Office Of Town Manager*

Re: Special Magistrate

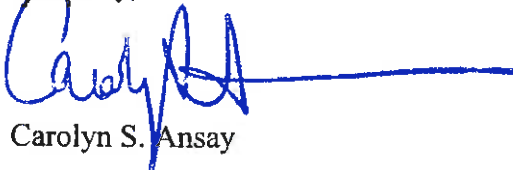
Dear Ms. Davis:

I was recently contacted by Tom Baird and informed of the Town's determination to contract with a new magistrate for code enforcement proceedings. I am certainly interested in serving as code magistrate for the Town of Lake Park and enclose my resume for your consideration.

My practice is focused primarily on local government law and code enforcement issues. I currently serve as a code enforcement magistrate for the Town of Jupiter, the Village of Palm Springs and the City of Stuart. I also serve as the City Attorney for the City of Edgewater. I have previously served as the Interim City Attorney for the City of New Smyrna Beach and as special counsel to other local governments across Florida. I would propose serving as the Town of Lake Park's magistrate at a rate of \$200 per hour.

I understand the matter will be presented to the Town Commission on May 21, 2008. Should you need any additional information prior to the meeting, please do not hesitate to contact me. Thank you for the opportunity and consideration.

Sincerely,

  
Carolyn S. Ansay

CSA:kl  
Enclosure

## CAROLYN S. ANSAY

Carolyn Ansay practices in the areas of local government law, environmental law, land use, government contracts, and civil litigation. She serves as code enforcement magistrate for the Town of Jupiter, the Village of Palm Springs and the City of Stuart. She also serves as City Attorney for the City of Edgewater and as General Counsel for the Water Authority of Volusia and the Treasure Coast Regional Utilities Organization. Ms. Ansay has instructed students in environmental and land use law in the undergraduate program at Embry-Riddle University and in the Environmental MBA program at Florida Atlantic University.

### EXPERIENCE

#### **Doran, Wolfe, Ansay & Kundid**

Associate March 1997 to August 1998

Partner August 1998 to March 1999, April 2000 to Present

City Attorney for the City of Edgewater, Florida. Code Enforcement Magistrate, City of Stuart. Code Compliance Magistrate, Town of Jupiter and Special Magistrate, Village of Palm Springs. Private practice emphasizing local government law, land use, environmental law, government contracts and civil litigation. Representative clients include local governments, state governmental agencies, several consortia of local governmental entities, and numerous private clients with environmental, land use and governmental relations concerns.

#### **Department of Environmental Protection**

##### **Southeast District**

West Palm Beach, Florida

March 1999 to April 2000

Program Administrator Senior-level management and supervisory position responsible for administering the Southeast District's Office of Environmental Affairs. Responsible for overseeing staff devoted to intergovernmental coordination, Lake Okeechobee and Everglades restoration, pollution prevention, media affairs, and major environmental problem-solving and permitting controversies.

#### **Florida Atlantic University**

##### **Environmental MBA Program**

Boca Raton, Florida

Adjunct Professor Focus on land use and environmental law within the Environmental Master of Business Administration Program

#### **Embry-Riddle University**

Daytona Beach, Florida

Adjunct Professor Focus on land use and environmental law.

## EDUCATION

### **University of Florida College of Law**

Gainesville, Florida

Degree Conferred: Juris Doctor, *with honors*, December, 1996

American Bar Association National Liaison to Section of Natural Resources, Energy and Environmental Law, 1995-96

Environmental Law Society President, 1994-95

Environmental Moot Court Selection Committee, 1995

Public Interest Environmental Conference Board Member, 1994-96

Book Award: Legal Research and Writing, Spring 1994

Book Award: Property, Fall 1994

### **University of Miami**

Coral Gables, Florida

Degree Conferred: Bachelor of Arts, *with honors*, May, 1993

Major: Economics

Minor: Management

Member of the Honors Program

Master Tutor Program

Study Abroad at the University of Wollongong, NSW, Australia

## PROFESSIONAL AND CIVIC ASSOCIATIONS

The Florida Bar, Environmental and Land Use Law and City, County and Local Government Law sections

Palm Beach County Bar Association

Palm Beach County League of Cities

Florida Association of Code Enforcement

Florida Municipal Attorneys Association

United States District Court, Southern, Middle and Northern Districts of Florida

United States Court of Appeals, Eleventh Circuit

## **SPEAKING ENGAGEMENTS**

- June 20, 2004 Florida Chamber's Environmental Permitting Summer School;  
Florida Chamber of Commerce (in conjunction with DEP, DCA, Florida  
Association of Counties, Florida League of Cities and others);  
Marco Island.
- December 9, 2004 Water Matters!  
Florida Environmental Network (Florida League of Cities, Florida  
Association of Counties, Florida School Board Association and Special  
Districts Association);  
Orlando.
- January 10, 2005 Invited Speaker on Local Government Perspective for Development of Senate  
Bill 444;  
Florida Senate, Committee on Environmental Preservation;  
Tallahassee.
- March 2, 2005 Florida Chamber's Annual Growth Management and Environmental  
Permitting Short Course;  
Florida Chamber of Commerce (in conjunction with DEP, DCA, Florida  
Association of Counties, Florida League of Cities and others);  
Orlando.
- May 23, 2005 2005 Growth Management Workshop;  
Florida Department of Community Affairs;  
Tallahassee.
- June 29, 2005 Brownfields Redevelopment Workshop;  
City of Lake Worth Community Redevelopment Agency;  
Lake Worth.
- April 3, 2006 Florida Water Law;  
CLE International;  
Tampa.
- May 4, 2006 Dock Permitting Workshop;  
Volusia County Environmental Management;  
Daytona Beach.

# TAB 7

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

Meeting Date: May 21, 2008

Agenda Item No. *Tab 7*

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

**SUBJECT:** Notification of Purchase Order for Sidewalk Repair/Replacement in the Amount of \$14,185.65

**RECOMMENDED MOTION/ACTION:** Approve

Approved by Town Manager *He. Davis* Date: *5/14/08*

Name/Title

Date of Actual Submittal

<b>Originating Department:</b> Town Manager	<b>Costs:</b> \$ \$14,185.65  <b>Funding Source:</b> Streets & Roads Contractual Services Acct. #	<b>Attachments:</b> <b>Sidewalk Replacement Locations; Contractor Proposal, Purchase Order</b>
<b>Department Review:</b> <input type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case _____:  Please initial one.

**Summary Explanation/Background: This agenda item is to notify the Town Commission that a purchase order in the amount of \$14,185.65 was inadvertently issued for sidewalk repair and replacement without Town Commission authorization.**

**The sidewalk replacement project was planned and budgeted; however, staff was under the impression that the Town Manager's purchasing authority threshold was \$15,000, not \$10,000, and a purchase order was issued for work that exceeds the Manager's authority. Additionally, staff has brought conflicting language contained in the Town's code and purchasing manual relating to purchasing authority thresholds to light that require modification. These modifications will be brought to the Commission at a later date.**

**It is requested that the Town Commission authorize the issuance of this purchase order as a confirmation order after the fact, as some of the work has already been completed.**

## Sidewalk Replacement Quantities

<u>LOCATION</u>	<u>LENGTH</u>	<u>WIDTH</u>	<u>SQUARE FEET</u>
700 6 <sup>TH</sup> STREET	64'	5'	320
535 PARK AVENUE (Rear)	19'	5'	95
622 FLAGLER	20'	5'	100
633 WEST ILEX DRIVE	14'	5'	70
711 WEST ILEX DRIVE	56'	5'	280
705 WEST ILEX DRIVE	21'	5'	105
600 NORTHLAKE BOULEVARD	18'	5'	90
714 NORTHLAKE BOULEVARD	17'	5'	85
<b>TOTAL</b>	<b>229</b>		<b>1,145 SF</b>



RECEIVED  
9/7/08

CONSTRUCTION

INCORPORATED 2180 S.E. 1st Street • Boynton Beach, FL 33435 • (561) 737-4175 • Fax (561) 369-1445

PROPOSAL SUBMITTED TO: Town of Lake Park	CELL: 722-9379 FAX: 881-3349	DATE: 04/04/2008 ATTN: Mr. Howard Butts
STREET 650 Old Dixie Highway	JOB NAME Replace city sidewalks	
CITY, STATE, ZIP CODE Lake Park, FL 33403	LOCATION Ilex, N. Lake Blvd., 6th St., Park, Flagler	

We hereby submit specifications and estimates for: Concrete Services Contract 03C-75A

ZONE 1				
NO.	DESCRIPTION FLATWORK	EST. QUANTITY	UNIT PRICE	TOTAL AMOUNT
1	Excavate and stockpile	8.00 cy	\$10.00 cy	\$80.00
2	Fine grade	1,099.00 sf	\$2.50 sf	\$2,747.50
3	Concrete 2500 PSI regular finish and place <i>6" with depth</i>	22.00 cy	\$125.00 cy	\$2,750.00
4	Light broom finish	1,099.00 sf	\$0.35 sf	\$384.65
5	Vapor barrier	0.00 sf	\$0.06 sf	\$0.00
6	6 x 6, 10/10 W.W.F. furnish and place	0.00 sf	\$0.20 sf	\$0.00
7	Reinforcing, steel grade 60, furnish and place	0.00 lb	\$0.50 lb	\$0.00
8	Formwork, 4" thick	0.00 lf	\$4.00 lf	\$0.00
9	Formwork, 6" thick	435.00 lf	\$4.50 lf	\$1,957.50
10	Cost per lineal foot for temporary fencing	190.00 lf	\$8.00 lf	\$1,520.00
11	Cost per cubic yard for backfill	0.00 cy	\$15.00 cy	\$0.00
12	Cost for furnishing / installation of sod	0.00 sf	\$0.50 sf	\$0.00
13	Concrete, each 500 PSI increase over 2500 PSI	22.00 cy	\$3.00 cy	\$66.00
14	Concrete, increase for pump mix	0.00 cy	\$15.00 cy	\$0.00
15	Pump, concrete for placing pump mix	0.00 hr	\$100.00 hr	\$0.00
16	Header curb, type C, furnish and install	0.00 lf	\$24.00 lf	\$0.00
17	Hourly labor rate (Demo, disposal, fibermesh)	104.00 hr	\$45.00 hr	\$4,680.00
<b>Total Expenditure:</b>				<b>\$14,185.65</b>

We propose hereby to furnish material and labor – complete in accordance with above specification, for the sum of:

Fourteen thousand one hundred eighty five and 65/100

(\$14,185.65)

Payment to be made as follows:

Invoice to be submitted upon completion; payment within thirty days

Authorized Signature

(president)

Term Contract To:

06/09/08



LAKE PARK TOWN HALL

NATIONAL HISTORIC SITE

# THE TOWN OF LAKE PARK

535 PARK AVENUE  
 LAKE PARK, FLORIDA 33403  
 (561) 881-3350 FAX (561) 881-3358

TO: 54033  
 G&F CONSTRUCTION INC  
 2100 SE 1ST STREET  
 BOYNTON BEACH, FL 33435

PURCHASE ORDER	
PURCHASE ORDER NUMBER	54488
DATE	04/23/08
DEPT. CODE	
REQUISITION NUMBER	190-145
OUR PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, PACKING LIST, AND CORRESPONDENCE.	

SEND INVOICE TO	DELIVER ITEMS TO	DELIVERY DATE
TOWN OF LAKE PARK DIRECTOR OF FINANCE 535 PARK AVENUE LAKE PARK, FL 33403	PUBLIC WORKS DEPARTMENT 650 OLD DIXIE HIGHWAY LAKE PARK 33403	04/23/08

SPECIAL INSTRUCTIONS: PER PALM BEACH COUNTY CONTRACT 03C-75A

TERMS: NET 30

THIS IS...  AN ORDER  A CONFIRMATION

UNIT DESCRIPTION	ACCOUNT NUMBER	QUANTITY	UNIT PRICE	AMOUNT
REPAIR/REPLACE BROKEN SIDEWALK	190-53000	1.00	14185.65	14,185.65
			<b>TOTAL</b>	<b>14,185.65</b>

RECEIVING REPORT COPY

FLORIDA STATE SALES TAX EXEMPTION CERTIFICATE NO. 60-13-116484-54C

FEDERAL TAX EXEMPTION CERTIFICATE NO. 59-6000355

PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES, AND SHIPPING DOCUMENTS. DELIVERIES WILL BE ACCEPTED MONDAY THRU FRIDAY 8:30 AM - 4:00 PM

APPROVED DIRECTOR of FINANCE

# TAB 8

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

Meeting Date: May 21, 2008

Agenda Item No. *Tab 8*

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

SUBJECT: Request for a sign waiver for the Kelsey Market sign in the PADD.

RECOMMENDED MOTION/ACTION: Disapproval

Approved by Town Manager *AL Davis* Date: *4/14/08*

<b>Originating Department:</b> Community Development	Costs: \$ N/A  Funding Source:  Acct. #	Attachments: <b>Staff Report</b>
<b>Department Review:</b> <input type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Community Affairs _____ <input checked="" type="checkbox"/> Community Development _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case _____:  Please initial one.

**Summary Explanation/Background:** The Kelsey Market sign is mounted on the roof of the building and is therefore a noncomplying sign because of its placement on the roof. Staff recommends moving the sign to above the door. It will be a complying sign if it is moved. Other signs in the PADD have been moved off the roof. Camilli's Pizza is one example. Allowing the Kelsey Market sign to remain would be inconsistent with recent decisions regarding other signs in the PADD. The owner of the sign is upset because the town originally approved his sign on the roof. The Planning and Zoning Board, with staff approval, recommends that the entire cost of relocating the sign be paid for by the town out of existing grant money due to the fact that the town did approve the original placement. Relocating the sign will bring it into compliance.



**TOWN LAKE OF PARK  
TOWN COMMISSION**  
Meeting Date: May 21, 2008  
Date Prepared: May 12, 2008

**APPLICATION FOR A WAIVER FROM THE SIGN REQUIREMENTS OF TOWN CODE SECTION 78-70(p)(1)(v) BY APPLICANT, HOPE INVESTMENT ENTERPRISES, INC.**

**APPLICANT'S REQUEST:** Mr. Ibrahim Ibrahim, owner of, Hope Investment Enterprises, Inc., ("Applicant") located at 903 Park Avenue (corner of 9<sup>th</sup> Street) ("Property") in the Town of Lake Park, has requested a waiver from the sign requirements of Town Code Section 78-70 (p)(1)(v) which prohibits "*Roof-mounted signs*," pursuant to the waiver provisions of Town Code Section 78-70 (l). The Applicant has requested a waiver to allow the existing roof-mounted sign to remain on the Property.

**STAFF RECOMMENDATION:** DENIAL subject to the recommendation as stated herein.

**P&Z RECOMMENDATION:** At their May 5, 2008 meeting, the Planning and Zoning Board voted 5-0 to DENY the waiver request with the condition to:

- (1) Defray any costs of relocation and repair to the roof. The Board agreed that the Code must be abided by and the sign should be relocated to a permitted wall-mounted location, although given that the Applicant was wrongfully issued a building permit by the Town in 2005, this relocation and roof repair should be done **at the Town's expense.**

**BACKGROUND:**

<b>Applicant(s):</b>	<b>Hope Investment Enterprises, Inc., by Mr. Ibrahim Ibrahim, owner</b>
<b>Owner(s):</b>	Mr. Ibrahim Ibrahim
<b>Address/Location:</b>	903 Park Avenue, Lake Park, FL 33403 (Corner of 9 <sup>th</sup> Street)
<b>Net Acreage:</b>	0.097 acres (4234 SF)
<b>Legal Description:</b>	See Application
<b>Existing Zoning:</b>	Park Avenue Downtown District ("PADD")
<b>Future Land Use:</b>	Mixed Residential / Professional

**Adjacent Zoning**

<b>North:</b>	R2
<b>South:</b>	PADD
<b>East:</b>	PADD
<b>West:</b>	PADD

**Adjacent Existing Land Use**

<b>North:</b>	Residential Medium Density
---------------	----------------------------

**South:** Commercial  
**East:** Mixed Residential / Professional  
**West:** Commercial

## I. SUMMARY OF APPLICANT'S WAIVER REQUEST

Pursuant to the general waiver provisions of Town Code Section 78-70 (l), the Applicant, Hope Investment Enterprises, Inc., has requested a sign waiver from Section 78-70 (p)(1)(v) of the Town Code which prohibits "Roof-mounted signs" in order to keep the existing roof-mounted sign which has been located on the Property since April 2005 when it was permitted. (see image of subject sign on next page).

## II. ANALYSIS OF CRITERIA AND FINDINGS FOR A WAIVER

Town Code Section 78-70 (l) contains specific review criteria, which must be used in evaluating an application for a waiver of PADD requirements. An application for a waiver pursuant to Section 78-70(l), must comply with a **preponderance** of the criteria listed below. The Applicant addressed each of the individual criteria in his application found herein. Some of the Applicant's justifications for the various criteria are summarized below in the following Staff commentary:

**Criteria (a)** Is the application consistent with the Comprehensive Plan? The Applicant failed to directly address the Comprehensive Plan. Staff states that the Application is consistent with the Town's Comprehensive Plan because the Comprehensive Plan does not address signage. Staff finds that this Criteria has been met.

**Criteria (b)** Is the application consistent with the intent of Section 78-70? The Applicant states that the sign is simply advertising the business name and is not a deterrent. Staff states that the Applicant's response has failed to demonstrate that Application is consistent with any of the intents and purposes of the PADD regulations contained in Section 78-70. Roof-mounted signs are prohibited in the PADD. Staff finds that this Criteria has NOT been met.

**Criteria (c)** Does the application further the Town's goal to establish a neighboring and community-serving urban center? The Applicant states the roof-mounted sign promotes the pedestrian nature of the area and attracts both residents and visitors to the downtown. Staff does not believe that the Applicant's explanation satisfies the intent of this Criteria. There are other reasonable alternatives to this prohibited roof-mounted location, which can serve the stated purpose of the Applicant. Town staff finds that this Criteria has NOT been met.

**Criteria (d)** Does the application further the Town's goal to create a pedestrian-friendly environment? The Applicant states that the roof mounted sign provides security at night time. Staff does not feel that this explanation has much basis. A permitted "wall-mounted" location would provide the same security. Staff recommends a wall-mounted sign in place of the roof-mounted sign. A wall mounted sign is a permitted type of sign, which would further a pedestrian-friendly

environment. Roof-mounted signs are prohibited and are not appropriate in the PADD. Town staff finds that this Criteria has NOT been met.

**Criteria (e)** Does the application further the architectural and site design elements of this section? The Applicant simply states that the sign is attractive and was previously permitted. Staff reiterates that a “prohibited” roof-mounted sign does not further the architectural or site design elements of the PADD Code requirements, but instead is in conflict with the regulatory intent of these requirements. A feasible wall-mounted alternative is available. Town staff finds that this Criteria has NOT been met.

**Criteria (f)** Does the application demonstrate that special conditions and circumstances exist which are peculiar to the land, structure of building involved or proposed, and which are not applicable to other lands, structures, or building in the Park Avenue Downtown District? The Applicant does not address the question. Staff has determined that there are alternate locations that can be utilized on the Property to render this sign permissible, such as a wall sign. Moreover, the Applicant’s response fails to demonstrate that there is any special condition or circumstance that is peculiar to the Applicant’s land, structure, or building which would warrant a waiver to allow the roof-mounted sign. Staff finds that this Criteria has NOT been met.

**Criteria (g)** Does the application demonstrate that the special conditions and circumstances do not result from the actions of the Applicant? As stated in response to Criteria (f) above, there are no special conditions or circumstances that are peculiar to the Applicant’s land, structure, or building. Staff finds that this Criteria has been NOT been met.

**Criteria (h)** Does the application demonstrate that granting the waiver requested will not confer upon the applicant any special privilege that is denied by this section to other lands, buildings, or structures in the Park Avenue Downtown District? The Applicant states that he was previously granted a permit for the roof-mounted sign. In being aware that situations like these occurred in the past, whereby a permit was wrongfully issued, Staff provided a large window ranging from 6-12 months, along with two certified letters to all business and property owners, notifying them that all non-complying signs would need to be replaced. Granting this waiver request will confer a special privilege upon the Applicant. All other businesses in the PADD are required to comply with the PADD sign code requirements and have done so in a timely manner. Staff finds that this Criteria has NOT been met.

**Criteria (i)** Does the application demonstrate that literal application of the provisions of this section would deprive the applicant of rights commonly enjoyed by other properties within the Park Avenue Downtown District? The Applicant has failed to submit sufficient evidence with respect to this criteria. Staff states that given the available wall-mounted space on the façade of the building, re-locating the prohibited roof-mounted sign to a wall-mounted location would not impair or negatively affect the ability of persons to locate the Applicant’s business, nor impede upon the security of the business. Roof-mounted signs are prohibited therefore this

is not a right that is enjoyed by any property owner. Staff finds that this Criteria has NOT been met.

**Criteria (j)** Does the application demonstrate that the waiver is not based solely upon economic reasons? The Applicant does not rely upon economic reasons as a basis for the waiver request according to the statements contained in the Application. Therefore, Staff has assumed that this waiver request is not based solely upon economic reasons. Staff finds that this Criteria has been met.

**Criteria (k)** Does the application demonstrate the request for waiver will be in harmony with the general intent and purposes of Section 78-70 (PADD regulations), and that the waiver will not be injurious to the area involved, or otherwise detrimental to the public health, safety, and welfare? Staff contends that granting the waiver will NOT be in harmony with the general intent and purposes of the PADD as an alternative is available to the Applicant whereby the existing roof-mounted sign may be relocated to a permitted wall-mounted location. The public health, safety, and welfare is not a factor as we are dealing with signage. Staff finds that this Criteria has NOT been met.

### **III. STAFF RECOMMENDATION**

Town staff recommends that the Planning & Zoning Board recommend **DENIAL** for the Applicant's sign waiver request. Town Code Section 78-70(l) requires the Applicant to demonstrate, through the submission of competent, substantial evidence that the waiver request complies with a preponderance of the above-stated waiver criteria. Town Staff has applied the afore-stated criteria in evaluating the Application and the evidence of record, and has concluded that the Applicant has failed to meet his burden of proof, in that the Applicant has not demonstrated by a preponderance of the competent substantial evidence, that the requested sign waiver should be granted. There are other suitable, locations for the signage that are permitted in the PADD, that can be effectively utilized on the Property, and which do not require a waiver of the PADD signage regulations.

### **IV. P&Z RECOMMENDATION**

At their May 5, 2008 meeting, the Planning and Zoning Board voted 5-0 to **DENY** the waiver request with the condition to:

- (1) Defray any costs of relocation and repair to the roof. The Board agreed that the Code must be abided by and the sign should be relocated to a permitted wall-mounted location, although given that the Applicant was wrongfully issued a building permit by the Town in 2005, this relocation and roof repair should be done **at the Town's expense.**



# TAB 9

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

Meeting Date: May 21, 2008

Agenda Item No. Tab 9

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

SUBJECT: Mid-year budget amendment

RECOMMENDED MOTION/ACTION: Approve ordinance.

Approved by Town Manager *W. Davis* Date: 5/2/08  
*Annem. Costello* May 2, 2008  
 Name/Title Finance Director Date of Actual Submittal

<b>Originating Department:</b>	Costs: \$  <b>Funding Source:</b> Acct. #	<b>Attachments:</b> Ordinance and backup
<b>Department Review:</b> <input checked="" type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development _____	<input checked="" type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ OR Not applicable in this case _____:  Please initial one.

**Summary Explanation/Background:**

The purpose of this ordinance is to amend the adopted budget for revenues and expenditures. The majority of this amendment is "housekeeping" for the proper presentation of financial statements in the audit. For example, new programs have been implemented such as the Sunset Celebration at the Marina and the Recreation basketball program that had no budgeted line items. Revenues have been received that were not anticipated during the budget process along with corresponding expenditures. Additionally, appropriations have been made by the Commission from reserves for which there were no existing line items. There are several categories that simply have a budgeted shortfall due to increased costs and cuts that went too deep.

Those expenditures above and beyond the adopted budget were only \$50,575 in the General Fund and \$88,225 in the Sanitation Fund. The Sanitation shortfall was the result of vehicle maintenance costs and increase fuel costs. Finally, a new fund has been created for tracking insurance expenses for which there were no budgeted line items

**ORDINANCE NO. 05-2008**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING THE TOWN BUDGET FOR FISCAL YEAR 2007-2008 AS PREVIOUSLY ADOPTED BY ORDINANCE NO. 24-2007; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town Commission has previously established the budget for the Town of Lake Park for the fiscal year beginning October 1, 2007 and ending September 30, 2008; and

**WHEREAS**, at the time of its adoption, the budget properly reflected expected revenues and appropriations; and

**WHEREAS**, to implement this budget, the Town Commission adopted and levied by Ordinance No. 23-2007 a tentative and final millage rate for the fiscal year 2007-2008; and

**WHEREAS**, the Town Commission deems it necessary and advisable to amend the budget for the Town of Lake Park for fiscal year 2007-2008; which was adopted in Ordinance No. 24-2007.

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

**Section 1.** An amended final budget of the Town of Lake Park has been duly prepared by the Town Manager and has been reviewed by the Town Commission, upon proper notice at public hearing, and the same is hereby adopted for the fiscal year beginning October 1, 2007 and ending September 30, 2008 as follows:

An amended final budget is hereby approved and adopted in the sum of \$ 15,673,829 , a copy of which is incorporated by reference along with approved budget amendments made a part hereof and which include among others, the following items.

**Amended Budget**

**Fiscal Year 2007-2008**

General Fund	\$ 10,753,930
Community Redevelopment Agency Fund	\$ 295,403 (no change)
Insurance Fund	\$ 452,700 (housekeeping)
Streets and Roads	\$ 470,048 (housekeeping)
Debt Service Fund	\$ 768,107 (no change)
Marina Fund	\$ 1,323,300 (housekeeping)
Sanitation	\$ 1,610,341

**Section 2.** Pursuant to the applicable provisions of the Constitution and Laws of the State of Florida and the Charter and Code of the Town of Lake Park, the object and purpose of the appropriations provided for by this Ordinance and the amount of each function of the government of the Town is hereby fixed, made and appropriated in accordance with the terms, specification and details contained within the said budget.

**Section 3.** The Town Manager is hereby authorized to amend/transfer authorization between departmental accounts provided; however, that total appropriated expenditures by fund do not exceed Commission authorized amounts.

**Section 4.** If any section, subsection, sentence, clause, phase or portion of the Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**Section 5.** All ordinances, including but not limited to Ordinance No. 24-2007 and/or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 6.** This ordinance shall take effect immediately upon adoption.

General Fund - 001

Expenditures		Revenue Offset		
Dept.	Description	Acct.	Description	Amount
100	Town Commission			
31000	Professional Services	381.110	Transfer fr CRA	15,000
				15,000
104	Town Manager			
44200	Equipment Leases	369.150	Miscellaneous - Copiers	3,775
				3,775
105	Human Resources			
22000	Retirement Contribution			3,350
44200	Equipment Leases			275
49000	Other Current Charges			600
				Not budgeted correctly New copier lease Travel - Library Director candidate
110	Information Technology			
15000	Special Pay			1,250
23100	Health Insurance			2,475
				Phone and DSL allowance not budgeted Dependent coverage not budgeted
106	Town Clerk			
48200	Recording Fees			500
51000	Office Supplies			800
52100	Gasoline & Diesel Fuel			200
				Additional liens filed by Community Development Increased cost of paper Increased cost of gasoline
108	Legal			
150	Finance			
15000	Special Pay			725
34000	Contractual Services			5,925
51000	Office Supplies			6,000
54200	Books, Memberships, Dues			650
44200	Equipment Leases	369.150	Miscellaneous - Copiers	5,725
				Phone allowance not budgeted Temporary accounting help due to vacancy Budget shortfall - signature plates, check stock GFOA dues and Certificate application fee Buyout of copier leases
200	Police Administration			
400	Public Work - Administration			
44200	Equipment Leases		Miscellaneous - Copiers	775
				775
406	Public Works - Grounds			
14000	Overtime Salaries			300
49400	Uniforms & Clothing			400
				Budget shortfall Budget shortfall



## 150 - Insurance Fund

### Revenue

<b>Acct.</b>	<b>Description</b>	<b>Amount</b>
380.001	Contrib. from General Fund	233,025
380.190	Contrib. from Street & Roads Fund	16,600
380.401	Contrib. from Marina Fund	109,225
380.404	Contrib. from Sanitation Fund	93,850
	Total	<u>452,700</u>

### Expenses

	<b>Description</b>	<b>Amount</b>
45000	Insurance - Property/Liab.	385,050
45120	Insurance - Storage Tank Liab.	850
45200	Insurance - Professional Bond	725
45400	Insurance - Excess Coverage	6,775
49500	Insurance Claims Deductible	25,000
99901	Contingency	34,300
	Total	<u>452,700</u>



**Streets & Roads Fund - 190**

**Revenue**

<b>Acct.</b>	<b>Description</b>	<b>Amount</b>	
337.410	Grant - R2007 0153	75,375	CDBG Grant not budgeted

Total	<u>75,375</u>
-------	---------------

**Expenses**

	<b>Description</b>	<b>Amount</b>	
82101	Drainage	75,375	CDBG Grant not budgeted

Total	<u>75,375</u>
-------	---------------

**Marina Fund - 401**

**Revenues**

<b>Acct.</b>	<b>Description</b>	<b>Amount</b>	
347.450	Sunset Celebration Proceeds	4,500	New Program - not budgeted
347.455	Arts Festival Proceeds	2,825	New Program - not budgeted
	<b>Total</b>	<u>4,500</u>	

**Expenses**

	<b>Description</b>	<b>Amount</b>	
48045	Promotional - Sunset Celebration	4,500	New Program - not budgeted
480050	Promotional - Arts Festival	2,825	New Program - not budgeted
	<b>Total</b>	<u>4,500</u>	

## Sanitation Fund - 404

### Revenue

<b>Acct.</b>	<b>Description</b>	<b>Amount</b>
365.100	Sale of Scrap	1,500
399.999	Balance brought forward	191,525
	Total	<u>193,025</u>

### Expenses

	<b>Description</b>	<b>Amount</b>
34500	Commissions - PBC Tax Collector	9,000
46000	Repair & Maintenance	28,500
46300	Vehicle Parts & Supplies	35,825
49400	Uniforms & Clothing	400
49500	Insurance Claims Deductible	1,500
52100	Gasoline & Diesel Fuel	13,000
64100	Machinery & Equipment	63,800
71000	Principal	32,000
72000	Interest	9,000
	Total	<u>193,025</u>

# TAB 10

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

Meeting Date: May 21, 2008

Agenda Item No. *Tab 10*

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

**SUBJECT:** An Ordinance in the form of a Zoning Code text amendment, amending Town Code Chapter 78, Section 78-70(p), pertaining to the signage requirements for the Park Avenue Downtown District ("PADD"), to provide stricter regulations on the size, use, and location of temporary real estate signs, to add a new requirement mandating sign permits to be obtained before permitted signs may be installed or displayed within the PADD, and amending Table 78-70-1 (Permitted Signs), to clarify and strengthen the sign matrix regulations relating to the maximum size, number, copy, location, and other general and specific additional regulations for permitted signs in the PADD.

**RECOMMENDED MOTION/ACTION:** Motion to approve Ordinance on first reading.

Approved by Town Manager *Randi McKittrick* Date: *4/29/08*

*Printed by TM Maria Davis*

<b>Originating Department:</b> Community Development	Costs: \$ N/A  Funding Source:  Acct. #	Attachments:
<b>Department Review:</b> <input checked="" type="checkbox"/> Town Attorney KER 041508 <input type="checkbox"/> Community Affairs _____ <input checked="" type="checkbox"/> Community Development _____	<input type="checkbox"/> Finance _____ <input checked="" type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case _____  Please initial one.

**Summary Explanation/Background:** Town staff initiated this Zoning Code text amendment to Chapter 78, Section 78-70(p), pertaining to the sign code regulations for signage within the Park Avenue Downtown District ("PADD"), to correct existing deficiencies in this Section of the Code. The proposed amendments will provide for stricter regulations on temporary real estate signs that advertise "for sale" and "for lease" real estate signs, will also create new subsection 78-70(p)(9), to require a sign permit be obtained from the Town prior to the erection of permitted signs in the PADD, and amend Table 78-70-1, entitled "Permitted Signs" to further clarify the restrictions on the maximum size, number, copy, and other related restrictions pertaining to permitted signs within the PADD. Note: The Planning and Zoning Board recommended that that the size of temporary real estate signs be increased from a maximum of 4 square feet to "square footage that has a maximum size of 50% of the length of the building frontage that fronts on Park Avenue." Staff disagrees with this recommendation because a maximum of 50% of the frontage will often result in signs that are too large. Instead, Town staff has recommended extending the maximum size of these type of signs to a maximum of not more than 9 square feet.

# Town of Lake Park Community Development Department



Meeting Date: May 7, 2008  
Memo Date: April 16, 2008

Patrick Sullivan, AICP, Director

To: Town Commission

Re: Sign Ordinance change

This is a request to make changes to the sign ordinance for the Park Avenue Downtown District (PADD). These changes are being initiated due to recent perceived flaws in the code. The Planning and Zoning Board reviewed the changes which were presented to them in two segments. The first set of changes added Temporary Real Estate signs to the permitted signs and regulates their placement and size. The P&Z Board voted to recommend approval by a vote of three in favor and two opposed with a condition that the permitted maximum size of the signs be increased from a maximum of 4 square feet to "square footage that has a maximum size of 50% of the length of the building frontage that fronts on Park Avenue." Staff disagrees and believes that a maximum of 50% of the frontage will in many cases result in signs that are too large. As an example, the Frame Shop would be allowed a 75 square foot temporary sign. Staff has reevaluated its original position and would recommend extending the size of the signs from 4 square feet to 9 square feet which would allow for a 3' x 3' sign which is more in keeping with the character of the area.

The second segment addresses changes to the sign regulation matrix which provides for regulating the size, number, copy and other limits for signs in the PADD. The P&Z Board voted to recommend approval of this segment as presented by a vote of four in favor and one opposed. The two segments have been combined into one ordinance for your review tonight.

The first set of changes has to do with regulating freestanding real estate signage in the PADD. As it stands now real estate signs are exempt from permitting and therefore can be placed anywhere as long as they don't exceed 32 square feet in size. The problem with this is that large "for sale or lease" signs that have recently cropped up in the PADD are not in character with the area. Other freestanding signs are not allowed in the district; the freestanding real estate signs should not be allowed either. This is also, as it stands now, free advertising for the real estate companies and we would like to change that by requiring them to get a permit and pay for it in order to put up a sign just like all the other business owners in the district.



These are examples of the real estate signage that has recently cropped up in the PADD.

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The second set of changes has to do with the requirements for permitted signage. As businesses are changing over their non-complying signs to complying signs I have noticed that the original language in the ordinance is perhaps more rigid than it needs to be. I have concerns that the literal reading of the code is detrimental to the businesses in the PADD. The suggestions for change will provide some flexibility to the business owners and allow them to accurately advertise their business. As an example, the code does not allow any wording other than the name and the address of the business. A restaurant business that wants to advertise on their sign that they have a bar along with the restaurant is not allowed to do so. The recommended change is to allow "words depicting nature of business" so that signs can have additional wording to help them advertise their business. Below are two examples of signs that are not allowed under today's regulations that require name and logo only. The extra writing is not allowed.



Finally, in this segment is an attempt to regulate the proliferation and quality of window signage while at the same time recognizing the importance of properly utilized window signage to a business. We will discuss this area in more detail at the meeting. The signage on the left is what we are trying to encourage as opposed to the window on the right.



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More examples of window signs that do not comply with the code.



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**ORDINANCE NO. 06-2008**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING CHAPTER 78 ENTITLED "ZONING," ARTICLE III, SECTION 78-70, ENTITLED "PARK AVENUE DOWNTOWN DISTRICT" ("PADD"), TO AMEND SECTION 78-70(p) TO PROVIDE FOR ADDITIONAL REGULATIONS PERTAINING TO TEMPORARY SIGNS FOR REAL ESTATE SALES AND LEASING PERMITTED IN THE PADD AND TO REQUIRE A TOWN SIGN PERMIT BE OBTAINED PRIOR TO ERECTING OR DISPLAYING ANY PERMITTED SIGN WITHIN THE PADD; AMENDING TABLE 78-70-1 ENTITLED "PERMITTED SIGNS" TO CLARIFY CERTAIN RESTRICTIONS ON SIGN SIZE, NUMBER, COPY, AND OTHER RESTRICTIONS PERTAINING TO PERMITTED SIGNS IN THE PADD; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

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

**WHEREAS**, Town staff has recommended to the Town's Planning & Zoning Board and the Town Commission, that Town Code Section 78-70(p), containing the PADD regulations for

prohibited and permitted signage, be amended to provide for stricter regulations on temporary real estate signs that advertise property for sale and for lease within the PADD; and

**WHEREAS**, Town staff has also recommended to the Town's Planning & Zoning Board and the Town Commission, that Town Code Section 78-70(p) be amended to add new subsection 78-70(p)(9), to require that prior to the erection of permitted signs in the PADD, that a sign permit be applied for with the Town, that the proposed signage be reviewed by the Town's Community Development Director, and if the proposed signage is found to be in compliance with the requirements of the Town Code generally, and Section 78-70(p) specifically, that a sign permit be issued; and

**WHEREAS**, Town staff has further recommended to the Town's Planning & Zoning Board and the Town Commission, that Table 78-70-1, entitled "Permitted Signs" as contained in Town Code Section 78-70(p), be amended to further clarify the restrictions on the maximum size, number, copy, and other related restrictions pertaining to permitted signs within the PADD; and

**WHEREAS**, on April 14, 2008 the Lake Park Planning and Zoning Board reviewed the proposed zoning text amendments, and have made their recommendations to the Town Commission; and

**WHEREAS**, the Town Commission has considered the evidence and recommendations presented to it by the Town Staff, the recommendations of the Town's Planning & Zoning Board, and other interested parties and members of the public, regarding the proposed text amendments, and their consistency with the Town's Comprehensive Plan, and the goals and intent of the PADD Zoning District generally; and

**WHEREAS**, the Town Commission, after due notice and public hearings, deems it to be in the interest of the public health, safety, and general welfare to amend Chapter 78, Article III, Section 78-70(p), of the Town's Code, to provide for additional regulations pertaining to temporary real estate sale and leasing signs which may be erected within the PADD, to amend Town Code Section 78-70(p) to add new subsection 78-70(p)(9), to require that prior to the erection of permitted signs in the PADD, that a sign permit be applied for and obtained from the Town's Community Development Department, and that Table 78-70-1, entitled "Permitted Signs" as contained in Town Code Section 78-70(p), be amended to further clarify the restrictions on the maximum size, number, copy, and other related restrictions pertaining to permitted signs within the PADD.

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

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

**Section 2.** Chapter 78, Article III, Section 78-70(p)(1) and (2) of the Town of Lake Park Code of Ordinances is hereby amended, Section 78-70(p)(9) is hereby created, and Table 78-70-7 "Permitted signs" is hereby amended, to read as follows:

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

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

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

- a. A-frame, sidewalk, or sandwich signs;
- b. Alley signs, excluding signage of not more than one square foot in area for business identification/delivery purposes;
- c. Balloon signs;

- d. Banners;
- e. Bench signs;
- f. Billboards;
- g. Cabinet signs;
- h. Changeable copy signs, excluding signs for activities whose principal use involves changes in performances, such as live theaters, movie theaters, comedy clubs, etc;
- i. Electronic message signs;
- j. Flags, excluding American, state, and town flags as approved by the town manager;
- k. Freestanding signs, including monument signs, pole signs, and pylon signs;
- l. General product signs;
- m. Inflatable signs;
- n. Marquee signs, unless otherwise provided herein;
- o. Neon used to outline windows, buildings, doors, etc;
- p. Off-premises signs;
- q. Painted wall signs, with the exception of murals that are commissioned by the town depict historic scenes of Lake Park;
- r. Paper signs attached directly to a window or other surface, including "open," "closed," or similar signs;
- s. Parapet-mounted signs;
- t. Pennants and streamers;
- u. Plastic lettering attached directly to a surface;
- v. Roof-mounted signs;
- w. Signs which involve moving or rotating parts, intermittent lights, animation; and temperature display, or similar movements;
- x. Signs which emit smoke, sounds, odors, or any other visible matter;
- y. Snipe signs;
- z. Stab signs;
- aa. String lights, unless otherwise provided herein;
- bb. Temporary signs; ~~with the exception of real estate signs that advertise property for sale or space for lease;~~ and
- cc. Vending machines with product names, logos, lettering, etc., visible from a public right-of-way.

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

- a. Awning signs;
- b. Light pole signs;
- c. Menu signs;
- d. Neon signs utilizing a business name or logo;
- e. Political signs;
- f. Projecting signs;
- g. Special events signs;
- h. Wall signs; and
- i. Window signs.
- j. Temporary real estate signs that advertise a property or space for sale or lease; provided however,

that any such temporary “for sale” or “for lease” sign(s) may not be larger than six (6) square feet. The following additional requirements shall also apply to all such signs: (1) only one sign per property is allowed; (2) the sign may only be located on the premises and/or property that is being advertised for sale or for lease in the sign; (2) the sign must be clearly temporary in nature, and may only be erected or placed on an exterior building wall or inside a window of the premises; and (4) the sign must be professionally created or manufactured or produced (as opposed to hand made), and be generally aesthetically pleasing in keeping with the basic goals and intent of the PADD regulations.

(9) Permit Required. It shall be unlawful for any person or entity to erect, construct, post, display, or install any sign, lettering, or other form of advertising structure as herein defined, with the exception of political signs, in the PADD, without first obtaining the approval of the proposed signage and the required permit(s) from the town.

TABLE 78-70-7  
PERMITTED SIGNS

TABLE INSET:

Sign Type	Maximum Size	Maximum Number	Copy Limit	Other Limits
Awning Sign	3 square feet	1 per front OR side	Business name, address, phone number, and logo, and words depicting the nature of business (letters shall be not more than 50% of the height of the letters depicting the business name)	*Letters, numbers, and logo shall not exceed 6 inches in height.
	--	--	--	*Located only on valance

Changeable Copy Sign	<u>50 square feet</u> <u>Not more than 50% of any portion of a building fronting on or facing Park Ave.</u> -	1 per front of building street frontage	<del>Business name, and name, time, and date of current and upcoming events, and words describing the nature of the business (letters shall be not more than 50% of the height of the letters depicting the name of the business.)</del> <u>The name, time, and date of current and upcoming events may also be displayed.</u>	*May substitute as a wall sign, <u>but</u> shall not be used in addition to a permitted wall sign.
	--	--	--	*Marquee sign may be used
	--	--	--	*Marquee sign may extend over walkways, a minimum 8 foot clearance <u>is</u> required.
	--	--	--	*Marquee shall not extend beyond top of roof
	--	--	--	*Marquee sign shall be proportionate to size of building

Flags	<del>None.</del> Display of flags of the United States shall be in accordance with <u>current U.S. Code of Federal Regulations (C.F.R.)</u> to the extent <u>reasonably possible, and flag size shall be</u> Proportionate to the size and height of the flag pole	1 flag pole per business	US, Florida, and Town of Lake Park flags	*Freestanding flagpoles shall not exceed 50 feet in height, <u>except for otherwise permitted stealth telecommunications facilities in a flagpole design.</u>
	--	--	--	*Building-mounted flag poles shall not extend into any public <del>right-of-say</del> <u>right-of-way.</u>
Light Pole Sign	Per Town Commission	1 per pole	Per Town Commission	*Must be approved by Town Commission
Menu Sign (Restaurants only)	3 square feet	1 per restaurant	Restaurant menu	*Within 2 feet of front door
	--	--	--	*Mounted on exterior wall <u>or in a window</u>
	--	--	--	*May be enclosed
Neon Sign	<u>15 square feet a maximum size of six (6) square feet in a window.</u>	1 per business	Business logo, name, open sign or depiction of product	*Mounted flush with wall <u>or in window</u>
	--	--	--	*First floor location only
	--	--	--	*One face only
	--	--	--	*Shall not project <u>by</u> more than 8 inches

	--	--	--	*Shall not be located on arcade or similar facade
	--	--	--	*May be located above or below canopy or arcade
	--	--	--	*May be used as a substitute for or part of a wall or window sign
Projecting Sign	3 square feet	1 per business	Business name, <u>phone number</u> , and logo, <u>and words describing the nature of the business (letters shall be not more than 50% of the height of the letters depicting the name of the business.)</u>	*Letters, numbers, and logo shall not exceed 6 inches in height.
	--	--	--	*Minimum clearance of 8 feet above sidewalk or public walkway
Political Signs	None	None	None	*Allowed pursuant to chapter 70.
Special Events Signs	None	None	None	*Signs, pennants, flags, streamers, banners, etc., as approved by the <del>town manager</del> <u>community development director</u> for special events <u>and for a limited duration as specified in the permit.</u>
	--	--	--	*Number, size, and location of signs to be approved by the <del>town manager</del> <u>community development director</u>



	--	--	--	*Display of signs shall not exceed 14 <u>calendar</u> days
	--	--	--	*Not more than 4 special events may occur on the same site or at the same use for each calendar year
String Lights	None	None	None	*String lights may not spell out or resemble the logo of any commercial product or use.
	--	--	--	*Installation at <u>places of business and on commercial or industrial properties</u> , must be approved by the <del>town manager</del> <u>community development director</u> .
	--	--	--	*Installation in landscaping can be permanent
	--	--	--	*Installation as a seasonal decoration may be displayed for a period not more than 45 <u>calendar</u> days
	--	--	--	*Installation as a seasonal decoration may occur not more than <u>6</u> 3 times per year

	--	--	--	*Installation as a seasonal decoration, may be used for <u>any one or more of the following holidays: beginning of the Christmas holiday season</u> through and including New Year's Day or only New Year's, Thanksgiving, Halloween, Easter, and Kwanza, and Hanukkah
	--	--	--	*Additional holidays may be recognized by the <del>town manager</del> <u>Community Development Director, upon the showing of good cause by the applicant.</u>
<u>Temporary real estate and for sale signs</u>	<u>9 square Feet</u>	<u>1 per property that is for sale or rent</u>	<u>Name, address, and phone number of agent; copy indicating that the subject property is "for sale" or "for lease", and other information deemed necessary and appropriate at the time of sign permitting.</u>	<u>*Professionally produced or created</u>
	--	--	--	<u>*Located on an exterior wall or in a window only, freestanding signage is strictly prohibited</u>

	--	--	--	<u>*A temporary sign permit is valid for 6 months from the date of permit issuance. A new permit must be applied for after the initial 6 month period expires. After the issuance of two temporary sign permits for the same property, the community development director, has the discretion to deny a request for an additional temporary sign permit on the grounds that the sign is not a temporary sign.</u>
Wall Sign	50% of building frontage facing Park Ave., 30% of building frontage for side streets	1 per business	Business name, logo, address, <u>phone number, and words describing the nature of the business (letters shall be not more than 50% of the height of the letters depicting the name of the business.)</u>	*Mounted flush with wall
	--	--	--	*First floor location only
	--	--	--	*One face only
	--	--	--	*Shall not project by more than 8 inches
	--	--	--	*Shall not be located on arcade or similar facade

	--	--	--	*May be located above or below canopy or arcade
	--	--	--	*May be painted directly on wall only if <u>the rendering is commissioned by the Town Commission, and the painted area accurately depicts a scene of historic Lake Park.</u>
Window Sign	<u>No more than 25% of any single window panel or pane area, up to a maximum of 4 square feet</u>	1 per window	Business name, address, logo, and telephone number, <u>and words describing the nature of business.</u>	* <u>Must be painted or applied directly onto the window surface, or hung within 6 inches of the window. Placement and design must be consistent, harmonious, and unified throughout all windows in the building.</u>
	--	--	--	*Neon sign(s) may be used for all or part of permitted signage.
	--	--	--	*Shall be located only on the first floor.
	--	--	--	* <u>Stand alone lettering is strongly discouraged. Lettering that incorporates graphic elements, borders, and backgrounds is preferred.</u>

				<u>*Plastic, vinyl, or other similar lettering of any form that is applied directly to a window is deemed to be a sign for purposes of this Section, and requires a sign permit approved by the Community Development Department prior to placement on a window.</u>
--	--	--	--	--

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

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

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

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

# TAB 11

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

Meeting Date: May 21, 2008

Agenda Item No. *Tab 11*

**PUBLIC HEARING**  
 Ordinance on Second Reading

RESOLUTION

DISCUSSION

**ORDINANCE ON FIRST READING**

BID/RFP AWARD

GENERAL APPROVAL OF ITEM

CONSENT AGENDA

Other:

**SUBJECT:** Ordinance amending Town Code Section 78-6 entitled "Reasonable Accommodations Procedures" which was adopted pursuant to Ordinance 18-2007, and thereafter codified in the Town Code, to change the designation of the hearing officer from the Town Manager to a Special Magistrate appointed by the Town Commission upon the recommendation and advice of the Town Attorney, and providing provisions for mail and newspaper publication of notice of hearings and the opportunity to be heard in accordance with the due process requirements of the state and federal Constitutions.

**RECOMMENDED MOTION/ACTION:** Motion to approve the Ordinance on first reading.

Approved by Town Manager: *[Signature]* Date: *4/29/08*

*Approved by TM Maria Davis*

<b>Originating Department:</b> Community Development	Costs: \$ N/A Funding Source: Acct. #	Attachments:
<b>Department Review:</b> <input checked="" type="checkbox"/> Town Attorney KER-51708 <input type="checkbox"/> Community Affairs _____ <input checked="" type="checkbox"/> Community Development <i>[Signature]</i>	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone <i>[Signature]</i> or Not applicable in this case _____: Please initial one.

**Summary Explanation/Background:** Minor Town Code amendment to Section 78-6, to change the designation of the hearing officer conducting public quasi-judicial hearings on requests for reasonable accommodations hearings from the Town Manager to a Special Magistrate, and to provide reasonable, courtesy mail notice to owners of real property which abut, are adjacent to, and are within 300 feet of the property which is the subject of the reasonable accommodation request, as well as publication of newspaper notice of the public hearing, date, time, and location, and the right and opportunity of all interested persons to be heard at the hearing.

**ORDINANCE NO. 07-2008**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING CHAPTER 78, ARTICLE I, SECTION 78-6, ENTITLED "REASONABLE ACCOMMODATIONS PROCEDURES" TO CHANGE THE DESIGNATION OF THE HEARING OFFICER FOR PUBLIC HEARINGS ON REQUESTS SUBMITTED TO THE TOWN FOR REASONABLE ACCOMMODATIONS, FROM THE TOWN MANAGER TO A SPECIAL MAGISTRATE APPOINTED BY THE TOWN COMMISSION; TO PROVIDE SPECIFIC PROVISIONS FOR MAIL AND NEWSPAPER NOTICE OF THE PUBLIC HEARING ON ANY REQUEST FOR A REASONABLE ACCOMMODATION; TO PROVIDE FOR AN OPPORTUNITY BY MEMBERS OF THE PUBLIC TO BE HEARD ON THE REQUEST FOR A REASONABLE ACCOMMODATION AT THE PUBLIC HEARING; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, pursuant to Article VIII, §2(b) of the Constitution of the State of Florida and Chapter 166, Florida Statutes, the Town of Lake Park, Florida (the "Town") has the governmental and corporate powers of a duly constituted municipality; and

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

WHEREAS, on or about August 22, 2007 the Town Commission adopted Ordinance No. 18-2007, pursuant to which new Town Code Section 78-6 was created to establish reasonable accommodation procedures to be followed by the Town in the event a disabled individual(s) and/or a qualifying entity requests a reasonable accommodation, and a means where appropriate (based upon record evidence and current law), for the Town to grant a reasonable accommodations to an applicant if the criteria established in the procedure have been satisfied; and

WHEREAS, subsequent to the adoption of Ordinance 18-2007, and the codification of Town Code Section 78-6, Town Staff has reconsidered certain provisions of the reasonable accommodations procedure, and has determined that it is in the best interests of the Town to



amend certain provisions contained in the procedure; and

**WHEREAS**, Town Staff has recommended to the Town Commission that subsections (4), (5), (6), (7), and (8) of Section 78-6, should be amended to change the designation of the individual authorized by the Town Commission to conduct the public quasi-judicial hearings on requests for reasonable accommodations from the Town Manager to a Special Magistrate, who is a licensed and current member in good standing of the Florida Bar, and who is appointed by the Town Commission upon the recommendation of the Town Attorney for the limited purpose of conducting the hearing; and

**WHEREAS**, in addition, Town Staff has also recommended to the Town Commission that subsection (4) of Section 78-6, be further amended to provide for specific provisions for the notice of the hearing on the request for a reasonable accommodations, to wit: (a) the provision of courtesy mail notice of the public hearing to persons who own real property which abuts, is adjacent to, or is within 300 feet of the real property which is the subject of a request for a reasonable accommodation(s), and (b) newspaper publication of the notice of the public hearing containing a brief description of the request for reasonable accommodation and the property to which the request is applicable, the proposed reasonable accommodation(s) requested by the applicant, and the time and place of the hearing of the special magistrate on the request for reasonable accommodation, and a statement that all interested persons will be afforded an opportunity to speak and be heard at the hearing; and

**WHEREAS**, the Town Commission has reviewed the recommendations of Town Staff and other interested parties and members of the public, regarding the proposed amendments, and their consistency with the requirements of state and federal law; and

**WHEREAS**, the Town Commission, after due notice and public hearings, deems it to be in the interest of the public health, safety, and general welfare to amend Chapter 78, Article I, Section 78-6 (subsections (4), (5), (6), (7), and (8)) of the Town's Code, as more specifically provided herein.

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

**Section 1.** The foregoing recitals are adopted herein as true and correct legislative findings of the Town Commission.

**Section 2.** Chapter 78, Article 1, Section 78-6, subsections (4), (5), (6), (7), and (8) are hereby amended to read as follows:

**Sec. 78-6 Reasonable Accommodation Procedures.**

(4) When a reasonable accommodation request form has been completed and submitted to the Department, it will be referred to the town manager and the town attorney provided to the town attorney for review and consideration. ~~The town manager, or his/her designee shall have the authority to consider and decide requests for reasonable accommodation, after a duly noticed public hearing has been held on the request and members of the public have been permitted to be heard on the request and provide comments, input, and other relevant information.~~ A special magistrate shall be selected and appointed by the town commission upon the recommendation of the town attorney to hear and decide requests for reasonable accommodation, after a duly noticed public hearing has been held on the request and members of the public have been permitted to be heard on the request and provide comments, input and other relevant information. Notice of the public hearing on the request for a reasonable accommodation shall be given at least 15 days before the public hearing in a newspaper of general circulation, and courtesy notice shall be given by certified mail, return receipt requested, to all landowners within 300 feet of the perimeter of the lot which is the subject of the request for a reasonable accommodation at least 15 days before the hearing of the special magistrate. The notice shall contain a brief description of the request for reasonable accommodation and the property to which the request is applicable, the proposed reasonable accommodation(s) requested by the applicant, and the time and place of the hearing of the special magistrate on the request for reasonable accommodation. Proof of publication of the notice shall be filed with the town clerk prior to public hearing of the special magistrate on the request for reasonable accommodation. For the purpose of this section, the measurement of 300 feet shall be taken in straight lines from the perimeter of the property which is the subject of the request for a reasonable accommodation. The provision for notice to all landowners within 300 feet may be dispensed with upon presentation to the special magistrate of a "waiver of notice" signed by all persons entitled to notice hereunder, which such waiver shall comply with the provisions of this section. Failure to receive such notice, however, shall not affect any action or proceeding taken hereon, nor is it intended to supplement the required notice provisions of state law for due process or any other purposes. ~~The town manager, or designee,~~ special magistrate shall not be required to render a decision on the request at the public hearing.

The ~~town manager, or designee,~~ special magistrate shall issue a written determination on the request within 45 days of the date of receipt of a technically complete application. The ~~town manager~~ special magistrate may, in accordance with federal law either: (1) grant the reasonable accommodation request in full, (2) grant a portion of the reasonable accommodation request and deny a portion of the reasonable accommodation request, and may also impose conditions upon the portion of the reasonable accommodation request that was granted, or (3) deny the reasonable accommodation request. Any denial of a reasonable accommodation request shall be in writing, and shall state the grounds for the denial. All decisions of the ~~town manager~~ special magistrate on a request for reasonable accommodation shall be in writing and shall give the applicant notice of the applicant's right to appeal. The written decision of the ~~town manager~~ special magistrate shall be sent to the applicant (i.e. the disabled individual or his/her authorized agent, attorney, or representative) by certified mail, return receipt requested at the address specified for notice by the applicant on the application form. If the ~~town manager, or designee,~~ special magistrate determines that additional information from the applicant is necessary for the ~~town manager~~ special magistrate to reach a determination on the request, the ~~town manager~~ special magistrate may, prior to the end of the 45-day period, issue a written request to the applicant detailing the additional information and/or records which are necessary for the ~~town manager~~ special magistrate to render a decision. The applicant shall have 15 days from the date of the written request for additional information within which to provide the requested information to the ~~town manager~~ special magistrate. In the event the ~~town manager~~ special magistrate timely requests the applicant to provide additional information, the 45-day determination period shall no longer be applicable, and the ~~town manager, or designee~~ special magistrate, shall issue a written administrative decision within 30 days after receipt of the additional requested information from the applicant. If the applicant fails to provide the requested additional information within the 15-day period, the ~~town manager, or designee~~ special magistrate, shall issue a written notice advising the applicant that due to the fact that the applicant failed to timely submit the additional information, the request for reasonable accommodation has been deemed by the town to be abandoned by the applicant and/or withdrawn, and that no further action by the town regarding the applicant's reasonable accommodation request shall be taken.

(5) In determining whether a reasonable accommodation request should be granted or denied, the applicant must establish that the applicant is protected under the provisions of the

FHA and/or ADA by demonstrating that the applicant is handicapped or disabled, as defined in the FHA and/or ADA. Although the definition of disability is subject to judicial interpretation, for purposes of this section, the disabled individual who is the subject of the request for a reasonable accommodation must show: (i) a physical or mental impairment which substantially limits one or more major life activities; (ii) a record of having such impairment; or (iii) that the disabled individual is regarded as having such impairment. After satisfying the foregoing three criteria, the disabled individual who is the subject of the request for a reasonable accommodation must demonstrate that the proposed accommodations being sought are reasonable and necessary to afford him/her an equal opportunity to use and enjoy housing. The foregoing three criteria, shall be the basis for the ~~town manager's~~ special magistrate's decision, and by the town commission in the event of an appeal.

(6) If denied an applicant may appeal the ~~town manager's~~ special magistrate's decision on a reasonable accommodation request within thirty (30) days after of the date on which the written decision is rendered by submitting a written notice of appeal to the ~~town manager~~ town's community development director. All notices of appeal shall contain a statement of the request for reasonable accommodation a statement of the facts and other evidence which the applicant contends supports the applicant's entitlement to a reasonable accommodation, a copy of the decision of the ~~town manager~~ special magistrate and any legal argument which the applicant contends support the applicant's the appeal and the alleged error in the ~~town manager's~~ special magistrate's decision. Appeals shall be heard by the town commission at a duly noticed public hearing. The town commission shall render a written Final Order on the appeal as soon as is reasonably practicable, but in no event shall the decision be rendered more than sixty (60) days after the notice of appeal was been filed by the applicant.

(7) No fee shall be imposed by the Department in connection with a request for reasonable accommodation under this section, or for an appeal of a decision of the ~~town manager~~ special magistrate to the town commission. The town shall have no liability for or legal obligation to pay an applicant's attorney's fees or costs, including attorney's fees and costs incurred in any appeal at any appellate level.

(8) During the time when an application for reasonable accommodation (or an appeal of a decision of the ~~town manager~~ special magistrate) is pending, the town shall not enforce the

zoning ordinance, rules, policies, and procedures which is the subject of the request for a reasonable accommodation against the applicant.

**Section 3. Codification.**

The provisions of this Ordinance shall become and be made part of the Code of Laws and Ordinances of the Town of Lake Park.

**Section 4. Severability.**

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

**Section 5. Repeal of Laws in Conflict.**

All ordinances or parts of ordinances of the Town of Lake Park, Florida, which are in conflict herewith are hereby repealed to the extent of such conflict.

**Section 6. Effective Date.**

The provisions of this Ordinance shall become effective upon adoption.

# TAB 12

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

Meeting Date: May 21, 2008

Agenda Item No. Tab 12

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

**SUBJECT:** An Ordinance amending the Town Code to create a new Chapter 11 to be entitled "Animals", new Article 1 to be entitled "General Regulations", new Article II to be entitled "Supplemental Regulations Pertaining Primarily to Dogs and Cats"; and new Sections 11-1 through 11-20, inclusive contained therein, to provide regulations and restrictions pertaining to the care, keeping, and restraint of animals within the corporate limits of the Town of Lake Park.

RECOMMENDED MOTION/ACTION: Motion to approve Ordinance on first reading.

Approved by Town Manager *Frankie McElroy* Date: 4/29/08  
*Agenda created by TM Maria Davis*

<b>Originating Department:</b> Community Development	Costs: \$ N/A  Funding Source:  Acct. #	Attachments:
<b>Department Review:</b> <input checked="" type="checkbox"/> Town Attorney KER 042108 <input type="checkbox"/> Community Affairs _____ <input checked="" type="checkbox"/> Community Development _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ OR Not applicable in this case _____  Please initial one.

**Summary Explanation/Background:** The current Town Code does not address the care, keeping, and restraint of animals within the Town. For example, the Code does not contain a leash law, requirements for the registration and inoculation of cats and dogs, pet curbing requirements, and other similar regulations pertaining to the humane care and treatment of animals, which are typically regulated by local ordinance, when not otherwise superceded by state or federal law. The creation of this new Chapter 11, Articles I and II, and the proposed new Code Sections 11-1 through 11-20 to be contained therein, will provide the Town with means to enforce and rectify, some of the more common nuisances caused by animals, as well as prohibit certain acts and omissions which constitute animal abuse and cruelty.

**ORDINANCE NO. 08-2008**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING THE CODE OF ORDINANCES FOR THE TOWN OF LAKE PARK, FLORIDA BY CREATING NEW CHAPTER 11 TO BE ENTITLED "ANIMALS"; PROVIDING FOR THE CREATION OF NEW ARTICLE 1, TO BE ENTITLED "GENERAL REGULATIONS"; PROVIDING FOR THE CREATION OF NEW SECTION 11-1 TO BE ENTITLED "DEFINITIONS"; PROVIDING FOR THE CREATION OF NEW SECTION 11-2 TO BE ENTITLED "BIRD SANCTUARY DECLARED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-3 TO BE ENTITLED "CRUEL AND INHUMANE TREATMENT OF ANIMALS PROHIBITED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-4 TO BE ENTITLED "PROVISION OF FOOD AND WATER TO CONFINED ANIMALS REQUIRED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-5 TO BE ENTITLED "MINIMUM REQUIREMENTS FOR THE POSSESSION AND SHELTERING OF CERTAIN ANIMALS"; PROVIDING FOR THE CREATION OF NEW SECTION 11-6 TO BE ENTITLED "MAXIMUM NUMBER OF HOUSEHOLD PETS"; PROVIDING FOR THE CREATION OF NEW SECTION 11-7 TO BE ENTITLED "REMOVAL OF PET EXCREMENT REQUIRED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-8 TO BE ENTITLED "NEGLECT AND/OR ABANDONMENT OF ANIMALS PROHIBITED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-9 TO BE ENTITLED "NUISANCES CREATED BY ANIMALS PROHIBITED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-10 TO BE ENTITLED "ANIMALS WITH CONTAGIOUS DISEASES PROHIBITED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-11 TO BE ENTITLED "AID TO INJURED ANIMALS REQUIRED"; PROVIDING FOR THE CREATION OF NEW ARTICLE II OF CHAPTER 11, TO BE ENTITLED "SUPPLEMENTAL REGULATIONS PERTAINING PRIMARILY TO DOGS AND CATS"; PROVIDING FOR THE CREATION OF NEW SECTION 11-13 TO BE ENTITLED "REGISTRATION TAGS AND LICENSES FOR DOGS AND CATS REQUIRED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-14 TO BE ENTITLED "DOGS RUNNING AT-LARGE PROHIBITED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-15 TO BE ENTITLED "ANIMALS INJURING OR KILLING OTHER ANIMALS PROHIBITED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-16 TO BE ENTITLED "DOGS DAMAGING PROPERTY OF OTHERS PROHIBITED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-17 TO BE ENTITLED "INJURY TO AND/OR INTERFERENCE WITH POLICE DOGS PROHIBITED"; PROVIDING FOR THE CREATION OF NEW SECTION 11-18 TO BE ENTITLED "REGULATIONS PERTAINING TO VICIOUS ANIMALS AND DANGEROUS DOGS"; PROVIDING FOR THE CREATION OF NEW SECTION 11-19 TO BE ENTITLED "IMPOUNDMENT"; PROVIDING FOR THE CREATION OF**



**NEW SECTION 11-20 TO BE ENTITLED “PENALTIES; PRIMA FACIE EVIDENCE OF VIOLATIONS”; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

**WHEREAS**, Town staff has recommended to the Town Commission that the Town Code be amended to provide for regulations pertaining to animals, including but not limited to, regulations related to the proper possession, treatment, conduct and behavior of pets and pet owners, damages caused by animals and associated penalties and liabilities of animal owners, provisions for impoundment of animals, regulations addressing dangerous and vicious dogs and feral cats, as well as the declaration of the entire corporate limits of the Town of Lake Park as a bird sanctuary, all as to be set forth in Chapter 11, Articles I and II, of the Code of Ordinances of the Town of Lake Park; and

**WHEREAS**, Town staff has determined that creating new Chapter 11, Article I, Sections 11-1 through 11-11 inclusive, and Article II, Sections 11-13 through 11-20, inclusive of the Town Code, is necessary to provide basic appropriate regulations, restrictions, and requirements for animal control for the benefit of Town residents and visitors, and the public health safety and general welfare; and

**WHEREAS**, after due notice and an opportunity for public comment at public hearings on this Ordinance as required by law, the Town Commission of the Town of Lake Park has determined that is in the best interest of the public health, safety, and general welfare, to amend the Town Code to create a new Chapter 11 to be entitled “Animals”, and a new Article I to be entitled “General Regulations”, and that the following new Code Sections also be created,

codified, and included in Chapter 11, Article I: Section 11-1 to be entitled “Definitions”; Section 11-2 to be entitled “Bird sanctuary declared”; Section 11-3 to be entitled “Cruel and inhumane treatment of animals prohibited”; Section 11-4 to be entitled “Provision of food and water to confined animals required”; Section 11-5 to be entitled “Minimum requirements for the possession and sheltering of certain animals”; Section 11-6 to be entitled “Maximum number of household pets”; Section 11-7 to be entitled “Removal of pet excrement required”; Section 11-8 to be entitled “Neglect and/or abandonment of animals prohibited”; Section 11-9 to be entitled “Nuisances caused by animals prohibited”; Section 11-10 to be entitled “Animals with contagious diseases prohibited”; Section 11-11 to be entitled “Aid to injured animals required”; and

**WHEREAS**, the Town Commission has also determined that is in the best interest of the public health, safety, and general welfare, to amend the Town Code to create new Article II of Chapter 11, to be entitled “Supplemental regulations pertaining primarily to dogs and cats”; and that the following new Code Sections also be created, codified, and included in Chapter 11, Article II: Section 11-13 to be entitled “Registration tags and licenses for dogs and cats required”; Section 11-14 to be entitled “Dogs running at-large prohibited”; Section 11-15 to be entitled “Animals injuring or killing other animals prohibited”; Section 11-16 to be entitled “Dogs damaging property of others prohibited”; Section 11-17 to be entitled “Injury to and/or interference with police dogs prohibited”; Section 11-18 to be entitled “Regulations pertaining to vicious animals and dangerous dogs”; Section 11-19 to be entitled “Impoundment”; and Section 11-20 to be entitled “Penalties; prima facie evidence of violations”.

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

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

**Section 2.** Chapter 11, Article I, Sections 11-1, 11-2, 11-3, 11-4, 11-5, 11-6, 11-7, 11-8, 11-9, 11-10, and 11-11 of the Code of Ordinances of the Town of Lake Park, Florida are hereby created to read as follows:

## **CHAPTER 11**

### **ARTICLE I. GENERAL REGULATIONS**

#### **Sec. 11-1. Definitions.**

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

*Abandon* means for an owner, harborer, or caregiver to forsake an animal entirely, or to neglect or refuse to provide or perform the basic legal obligations under state and local law for the care and support of an animal.

*Animal* means every living non-human creature, both domestic and wild.

*Animal control authority* means the town, Palm Beach County, Palm Beach County Animal Care & Control, and/or any other entity acting alone or in concert with the town, and which may also be authorized by the town to enforce the animal control laws of the town.

*At-large* means off the premises of the owner, harborer, or caregiver, unless accompanied by an attendant, who shall have the cat or dog firmly held by a collar and leash, and which leash may not exceed ten feet in length.

*Dangerous dog* means any dog that, according to the records of Palm Beach County Care & Control, or any other appropriate governmental entity or agency with jurisdiction:

(a) has without provocation aggressively bitten, attacked, or endangered a human being, or has inflicted severe injury on a human being on public or private property, or

(b) has, without provocation, severely injured or killed a domestic animal while off the owner's property, or

(c) has been used primarily, or in part, for the purpose of fighting, or is a dog trained for dog fighting; or

(d) has, without provocation, chased or approached a person upon the streets, sidewalks or any public grounds in an aggressive, menacing fashion or with an apparent attitude of attack; provided that such actions are attested to in a sworn statement by one or more persons, and dutifully investigated by the appropriate authority.

A dog shall not be declared dangerous if it is determined by the appropriate authority, that the threat, injury or damage was sustained by a person who, at the time, was unlawfully on the dog

owner's property or, while lawfully on the dog owner's property, was teasing, tormenting, abusing, torturing, attacking, or assaulting the dog or its owner or a family member or another animal. No dog may be declared dangerous, if the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack, assault, or battery.

*Dangerous or vicious animals* shall mean any animal that possesses fierce or dangerous propensities, which is likely to cause injury to persons or other domesticated animals, or damage to property, or any animal which exhibits traits which are ungovernable or unmanageable, or any animal which has bitten one or more persons without provocation on two separate occasions within a period of six months.

*Direct control* shall mean immediate, continuous physical control of an animal at all times, such as by means of a fence, cage, kennel, leash, cord, or chain of such strength to restrain the same; or in the case of specifically trained or hunting animals which immediately respond to such commands, direct control shall also include audible, aural, and/or oral control, if the controlling person is at all times clearly and fully within unobstructed sight and hearing of the animal.

*Domesticated household pet and domesticated animal* includes dogs, cats, parrots, parakeets, canaries, rabbits, guinea pigs, gerbils, hamsters, fish, turtles and other animals that can be legally sold in a licensed pet shop in the state of Florida, and which is kept as a pet for the purpose of providing human companionship. Domesticated household pets and/or domesticated animals do not include animals which are considered "exotic" or "wild animals", and/or which require a permit from the state of Florida before such animals may be purchased, sold, or possessed. The following animals are not considered household pets or domesticated animals pursuant to this chapter: livestock, wild animals as defined by the State of Florida Fish and Wildlife Conservation Commission, and hoofed animals of any kind, excluding purebred miniature potbellied pigs, also known as *Sus scrofa bittatus*. The *Sus scrofa bittatus* are considered household pets, and may be kept in compliance with the applicable provisions of this chapter.

*Feral animal means* an animal that exists in a wild or untamed state, either due to birth or reversion to a wild state from domestication and has no known owner. Stray animals may be feral or tame, but are considered feral when they are not known to be owned by another human or are unwanted.

*Harborer* means any person or entity which performs acts of care, shelter, protection, restraint, refuge, food or nourishment in such a manner as to control an animal's activities. For purposes of this chapter, an animal harborer is generally synonymous with an animal caregiver.

*Kennel* shall mean any place of business at which dogs or cats are kept for sale, breeding, boarding, treatment or grooming purposes. The word "kennel" shall not be held to include any humane society, animal protection agency, veterinary clinic or hobby breeder.

*Livestock* shall mean any grazing animal, such as horses, cattle, sheep, donkeys, mules, buffalos, llamas, swine, goats, other hoofed animals, emus, ostriches, and rheas that are raised for private use or commercial purposes. However, purebred miniature potbellied pigs shall be exempt from this definition.

*Nuisance caused by animals* means, but is not necessarily limited to, actions of animals which:

(1) disturb the peace and quiet enjoyment of property or the life of any person, such as habitually or continually barking, howling, crying, screaming, or making other bothersome noises.

(2) disturb the peace and quiet enjoyment of property or the life of any person, such as destroying, desecrating, defecating, or soiling public or private property, chasing persons, vehicles, and other animals, running at large and/or in packs, attacking or biting other persons and/or animals or other actions which are threatening or menacing and which would cause a reasonable person to believe that an animal attack or bite may be imminent.

(3) failing to remove animal waste, hair, rotting food, and/or other animal filth from the animal owner's (and/or harborer or caregiver) property, resulting in noxious odors, the attraction of rodents, insects, vermin, animal pests and parasites (i.e., ticks, fleas, worms, etc.), and the creation of other offensive and nuisance-like conditions.

(4) failing to eradicate fleas, ticks and other animal pests and parasites from the animal owner's (and/or harborer or caregiver) property which result in an infestation or proliferation of the same beyond the boundaries of the animal owner's (and/or harborer or caregiver) property, and/or other behavior that interferes with the reasonable use and quiet enjoyment of the life and/or real or personal property of another person.

Owner shall mean any person, firm, corporation, entity, or organization possessing, harboring, keeping, or having the care, control, or custody of an animal or, if the animal is owned by a person under the age of 18, that person's parent or guardian.

Police dog means any dog which is owned, or the service of which is employed, by a law enforcement agency for the principle purpose of aiding in the detection of criminal activity, enforcement of laws, apprehension of offenders, and/or rescue and recovery.

Proper enclosure of a dangerous dog means, while on the owner's (and/or harborer or caregiver) property, a dangerous dog is securely confined indoors or in a securely enclosed and locked pen, cage, or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. All such pens, cages, or structures shall have secure sides and a secure top to prevent the dog from escaping over, under, or through the structure, and shall also provide protection for the dog from the elements.

Torture, torment, cruelty shall include every act, omission, or neglect whereby unnecessary or unjustifiable mental or physical pain or suffering is caused, permitted, or allowed to continue when cessation is possible and/or where there is a reasonable remedy or relief from the condition(s) causing the pain and suffering.

#### **Sec. 11-2 Bird sanctuary declared.**

The entire corporate limits of the Town is declared to be a protected bird sanctuary. It shall be unlawful for any person to trap, hunt, shoot, kill, or attempt to trap, hunt, shoot kill, wound, maim, or molest any bird or wild fowl of any kind, in any manner or to rob bird or wild fowl nests, disturb their eggs, or young wild fowl nests, or to throw any missile, including the use of slingshots or any other weapon at any bird or wild fowl of any kind.

#### **Sec. 11-3 Cruel and inhumane treatment of animals prohibited.**

(a) The provisions of Sections 828.12 and 828.13, Fla. Stat., as they may be amended from time to time, are hereby adopted by reference in this article, and shall be enforced as if fully set forth herein. A copy of Chapter 828, Fla. Stat., is available for inspection in the office of the town clerk.

(b) It is a violation of this article for any person to commit an act or omission, or cause an act to be committed, in violation of Sections 828.12 and/or 828.13, Fla. Stat, as amended from time to time.

(c) Torture, cruelty, and the inhumane treatment of animals is prohibited. It is a violation of this article, for any person to torture, engage in animal cruelty, or inhumanely treat any animal as set forth herein. For the purpose of this section, the term "inhumane" means acts which:

(1) are physically cruel; or

(2) expose an animal to unusual, unnecessary and otherwise avoidable physical harm.

d) Inhumane treatment includes, but is not limited to, any of the following acts or omissions by an animal's owner or caretaker:

(1) An animal is allowed to become overheated, or is not supplied with a sufficient quantity of wholesome food, water, shade or protection from elements, keeps an animal in any enclosure without wholesome exercise and change of air.

(2) An animal which is improperly or inhumanely contained or denied proper exercise or rest. For the purposes of this article, the regulations set forth in Section 11-4 herein, and the United States Department of Agriculture and Florida Game and Fresh Water Fish Commission regulations pertaining to containment, exercise and rest, shall be the standards for proper containment, exercise and rest, as said regulations may be amended from time to time;

#### **Sec. 11-4 Provision of food and water to confined animals required.**

(a) No person owning or responsible for confining or impounding any animal, may refuse or neglect to continuously supply the animal with a sufficient supply of good and wholesome food and water.

(b) The food shall be sufficient to maintain all animals in good health.

(c) Potable water shall be available at all times for all animals.

#### **Sec. 11-5. Minimum requirements for the possession and sheltering of certain animals.**

(a) Possession generally. No person shall keep, possess or maintain any live animal, including livestock or fowl, within the town, except as provided herein. Dogs, cats, parrots, parakeets, canaries, rabbits, guinea pigs, hamsters, gerbils, turtles and other animals that can be legally sold in a licensed pet shop in the state may be kept, possessed and maintained as household pets within the town so long as they are kept, possessed and maintained in compliance with the provisions of this chapter, and provided that these household pets do not engage in behaviors that constitute a nuisance under the provisions of this chapter. Proper sanitary measures shall be observed and followed at all times in connection with the keeping, maintaining or possessing of such pets.

(b) Proper shelter. No person owning or responsible for confining or impounding any animal may fail to provide, the animal with proper shelter as prescribed in this section.

(c) Indoor standards. Minimum indoor standards of shelter shall include:

(1) Ambient temperatures. The ambient temperature shall be compatible with the health of the animal.

(2) Ventilation. Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animals at all times.

(d) Outdoor standards. Minimum outdoor standards of shelter shall include:

(1) Shelter from sunlight. For all animals tied or confined unattended outdoors during months of April through November, sufficient shade by natural or artificial means shall be provided to protect animals from direct sunlight.

(2) Shelter from inclement weather.

a. Animals generally. Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided as necessary for the health of the animal.

b. Dogs. If a dog is tied or confined unattended outdoors or in an unheated enclosure, a shelter of suitable size to accommodate the dog shall be provided. The minimum specifications for such shelter shall be as follows-

1. The shelter must be a moisture proof, weather tight doghouse maintained in good repair:

2. The shelter must be constructed and maintained so as to provide sufficient space to 1) allow the dog to turn around freely-, 2) allow the dog to easily sit, stand and lie in a normal position. 3) keep the dog clean, dry and comfortable: 4) maintain the dog's body heat;

3. The shelter must be made of durable materials including, but not limited to, wood or molded plastic;

4. The shelter must have an entrance covered by a self-closing swinging door or covering, or an "L" shaped entrance to prevent the wind and elements from blowing directly into the house;

5. The shelter must have clean bedding to provide insulation and protection against cold and dampness and promote the retention of body heat. Acceptable bedding shall include, but not be limited to, blankets, hay, straw, or cedar shavings;

6. The shelter must have suitable drainage, which rapidly eliminates excess water.

(e) Space standards. Minimum space requirements for both indoor and outdoor enclosures shall include:

(1) Structural strength. The housing facilities shall be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals.

(2) Space requirement. Enclosures shall be construed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress or abnormal behavior patterns.

(f) Sanitation standards. All pens, yards, structures or areas where animals are kept shall be maintained in a nuisance-free manner. Animal droppings shall be removed regularly and disposed of properly so not to attract insects or rodents, or become unsightly or cause objectionable odors.

(f) Tying or tethering dogs. A dog or puppy may be restrained by a fix-point chain or tether only under the following conditions:

(1) Any tethering system employed shall not allow the dog or puppy to leave the owner's property.

(2) No chain or tether shall weigh more than one-eighth (1/8) of the dog or puppy's body weight.

(3) Any chain or tether shall be at least ten (10) feet in length and have swivels on both ends.

(4) Any chain or tether must be attached to a properly fitting collar or harness worn by the animal. Choker collars shall not be used for dogs restrained on a fix-point chain or tether.

#### **Sec. 11-6. Maximum number of household pets.**

No person shall keep, maintain, possess or harbor more than six (6) domesticated household pets or domesticated animals upon a single lot, residence, or commercial/industrial business site. A

violation of this limitation shall constitute prima facie evidence of creating and maintaining a nuisance in violation of this chapter. The limitation established in this section shall not apply to dogs or cats under three months of age or to fish.

**Sec. 11-7. Removal of pet excrement required.**

(a) It shall be unlawful for any person to aid, abet, assist or allow any animal under their care, custody or control, or subject to their command, to deposit or place on any of the public or private sidewalks, parkways or walkways or parts of streets, or public parks or ways on the oceanfront devoted to the use of the public, or upon premises owned by any person other than the owner or custodian of such animal, any offal, feces or excrement of the animal.

(b) The owner or custodian of any animal is required to remove and dispose of, in a sanitary manner, the offal, feces, and/or excrement of any the animal which is deposited on public or private property, and to remove and properly dispose of animal waste, hair, rotting food, and/or other animal filth from the animal owner's own property if such conditions result in or cause the emission of noxious odors, are likely to attract rodents, insects, vermin, animals parasites and pests, and/or create other nuisance-like conditions which create a public health and safety hazard(s) and/or are offensive to neighbors and/or the general public.

**Sec. 11-8. Neglect and/or abandonment of animals prohibited.**

No person may abandon or discard any domesticated household pet or domesticated animal. Any code enforcement officer, law enforcement officer, or authorized Palm Beach County animal control officer, may remove, shelter and care for any animal which has been found to have been neglected, abandoned, tortured, inhumanely treated or otherwise treated in a cruel manner, cruelly exposed to the weather, confined in a vehicle without sufficient ventilation, water and/or in extreme temperatures, starved or denied adequate water, or other life threatening or endangering circumstances, and may deliver the animal to another person to be sheltered, cared for, and given medical attention, if necessary. Whenever reasonably possible, the owner, if known, shall be immediately notified, and the town, or other entity or person, having possession of the animal, shall have a lien thereon for its care, keeping and medical attention and the expense of notice.

**Sec. 11-9. Nuisances created by animals prohibited.**

(a) It shall be unlawful to keep or maintain any dog, cat, bird, or other animal, within the town, which causes a noise disturbance by habitually howling, barking, meowing, squawking, or other noise making. It shall also be unlawful to cause any animal, bird or fowl to make or create any excessive or unnecessary noise by taunting, beating or coercing the animal, bird or fowl, or by depriving same of necessary food, water or shelter.

(b) The town's code compliance division shall investigate alleged violations of this section upon the receipt of either:

(a) Sworn affidavits of complaint signed by 2 unrelated residents living in separate dwellings in the close vicinity of the alleged violation; or

(b) Sworn affidavit of complaint signed by a resident living in the close vicinity of the alleged violation together with a video tape of the activity complained of recorded by, or recorded in the physical presence of, such resident.



(c) The affidavit(s) shall specify the address or location of the alleged violation, the nature, time and date(s) of the act, the name and address of the owner or custodian, if known, and a description of the animal, if known. The video tape shall include the date and time of the event being recorded and shall provide evidence of the nature and extent of the violation.

(d) Upon receipt of the materials set forth in either (a)(1) or (a)(2), code enforcement procedures pursuant to chapter 9 of this Code may be instituted against the owner or custodian of any animal alleged to be in violation of this section.

(e) It is unlawful for any person to intentionally provide food, water, or other forms of sustenance or care to a feral cat or a feral cat colony.

#### **Sec. 11-10. Animals with contagious diseases prohibited.**

(a) No person who owns or has the charge of any animal and who has knowledge that the animal has a contagious or infectious disease or who knows that the animal has recently been exposed to a contagious or infectious disease, to permit the animal upon any public property within the town, to run at-large within the town, or to come into contact with the animal of another person without first disclosing the contagious or infectious disease and obtain the consent and permission of the non-infected animal owner.

(b) If a code enforcement officer or law enforcement officer has a reasonable belief that any dog or cat is not in a healthy condition, and/or may be suffering from a contagious or infectious disease, and/or may have bitten a person or other animal, the officer shall temporarily impound the dog or cat. The officer may keep the dog or cat in temporary quarantine for a period of time until the animal can be released to Palm Beach County Animal Care & Control for the purpose of testing the dog or cat for disease.

(c) Any dog or cat suspected of being infected with rabies must be released by its owners or custodian to Palm Beach County Animal Care & Control for laboratory analysis by a licensed veterinarian. The town shall have no liability for damages or other compensation to the owner of the dog or cat as a result of the impoundment and/or any procedure utilized by Palm Beach County Animal Care & Control on the dog or cat.

#### **Sec. 11-11. Aid to injured animals required.**

It shall be unlawful for any person who injures or maims any animal by running over or into the animal, or otherwise coming into contact with the animal, with an automobile, truck, motorcycle, bicycle, dirt bike, all terrain vehicle, any other type of motorized or non-motorized vehicle, or other object, to fail to immediately notify the owner of the animal, and/or a town code compliance officer, and/or a veterinarian, and/or a law enforcement officer, and/or Palm Beach County Animal Care & Control and seek medical attention for the animal. It shall be an additional violation of this section to leave the scene of an accident, which resulted in injuries to any domesticated animal or household pet, specifically including but not limited to, dogs and cats.

**Section 3.** Chapter 11, Article II, to be entitled “Supplemental regulations pertaining primarily to dogs and cats”; and Sections 11-13, 11-14, 11-15, 11-16, 11-17, 11-18, 11-19, and

11-20 of the Code of Ordinances of the Town of Lake Park, Florida are hereby created to read as follows:

**ARTICLE II. SUPPLEMENTAL REGULATIONS PERTAINING PRIMARILY TO DOGS AND CATS.**

**Sec. 11-13. Registration tags and licenses for dogs and cats required.**

(a) Every person who is the owner, caregiver or harbinger of any dog or cat, over the age of four months within the town must obtain a tag or license for each dog or cat from Palm Beach County Animal Care & Control denoting currently effective registration and inoculation data. No tag or license shall be granted or renewed until evidence of vaccination for rabies by a licensed veterinarian has been presented.

(b) All dogs over the age of four months shall be required to wear a sturdy collar to which the current license tag is securely affixed at all times except as otherwise provided by state law. It shall be the responsibility of the owner, keeper, or harbinger of such dog to ensure compliance with this section. Cats are not required to wear a collar or tag, but must be registered and inoculated pursuant to the provisions of this article.

(c) No person other than the owner or keeper, may remove or cause to be removed, the collar or tag required by this section from any dog within the town. A police dog shall be exempt from wearing an animal license tag while being used by a law enforcement agency.

**Sec. 11-14. Dogs running at large prohibited.**

It shall be a violation of this section for any dog to be upon any street, boulevard, road, alley, or other public or private property within the town, unless accompanied by an attendant who shall have such dog firmly held by collar and leash, which leash shall not exceed ten feet in length. The person who owns, keeps, harbors, or has possession, care, custody or control of any such dog shall be liable for a violation of this section. In the prosecution of any violation of this section, it shall not be necessary for the town to prove notice, knowledge, or neglect on the part of the owner, caregiver, harbinger, keeper, or other accused person, that the dog was either loose, running at large, or disposed to running at large. Any dog found running at large within the town is hereby declared to be a public nuisance, and the owner, caregiver, harbinger, keeper, or other accused person, of any dog found running at large shall be guilty of a violation of this section.

**Sec. 11-15. Animals injuring or killing other animals prohibited.**

Any person who owns or has in their possession, care, custody or control, any animal which has injured or killed, or has a habit of injuring and killing, dogs and/or other animals, and whose animal is found running at large is deemed to be in violation of this section. A violation of this section, shall be in addition to, and a separate violation, from a violation of section 11-14.

**Sec. 11-16. Dogs damaging property of another prohibited.**

(a) It shall be unlawful for any dog to enter upon the property of another and damage real and/or personal property. The person who owns, keeps, harbors, or has possession, care, custody or control of any such dog shall be liable for a violation of this section.

(b) Property of another shall include private property and any abutting publicly owned property, easements, rights-of-way, cemetery, church or any other property set apart for public use or held for benevolent or charitable purposes which the owner of the abutting private property maintains by planting, mowing, watering, fertilizing or similar care of grass, shrubbery, trees and the like, planted thereon. The intent of this section is to include all abutting property regardless of ownership except the property owned by the owner of the dog, or the property of those who have consented to the owner of the dog, to do damage on their property.

(c) Damage to property shall include, but not be limited to, urinating or defecating by any dog upon any property as contemplated herein.

(d) In the event that any dog enters upon the property of another within the corporate limits of the town and causes damage thereon, proof that (1) the damaged property belongs to a person other than the owner of the dog; and (2) the damage to property has resulted from the actions of the dog; and (3) the identity of the dog, shall be sufficient to for a finding of a violation of this section against the person who owns, keeps, harbors, or has possession, care, custody, or control of any the dog causing the damage. Consent of the owner of the property shall be a defense to the violation.

#### **Sec. 11-17. Injury to and/or interference with police dogs prohibited.**

It is unlawful for any person to knowingly batter, inflict cruelty or inhumane treatment, disable, injure, kill, torture, or torment any dog used by any law enforcement agency in an official capacity, while the animal is with an on-duty police officer, or while the animal is under the control and direction of a police officer and performing a law enforcement function, or to interfere with or obstruct any animal while the animal is being employed by a law enforcement agency in any authorized act within the agency's official capacity.

#### **Sec. 11-18. Regulations pertaining to vicious animals and dangerous dogs.**

(a) It shall be unlawful for any person to keep any vicious or fierce animal within the town unless it is confined within a secure building or enclosure or unless it is securely muzzled, and under the restraint of a competent person who by means of a leash, chain or rope has such animal under control at all times. All vicious dogs kept in the town shall be adequately muzzled if they appear on the public streets, thoroughfares or other public places in the town. An animal may be declared to be vicious by the Palm Beach County Animal Care & Control on the showing that the animal has bitten a person without provocation on two separate occasions within a period of six months, or if such animal shows fierce or dangerous propensities which if unrestrained are likely to cause injury to persons other than the owner. This declaration of viciousness shall be delivered in writing to the owner of the animal. If a dog that has not been declared a "dangerous dog" attacks and causes severe injury to or death of any human, the dog shall be immediately confiscated by the local animal control authority, placed in quarantine, if necessary, for the proper length of time or held for ten (10) business days after the owner is given written notification under Section 767.12, Fla. Stat., as amended, and thereafter destroyed in an expeditious and humane manner.

(b) It is unlawful for the owner of a dog who has been declared a "dangerous dog" by Palm Beach County Animal Care & Control, to permit the dog to be outside a proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under control of a competent person. The muzzle must be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but will prevent it from biting any person or animal. The

owner may exercise the dog in a securely fenced or enclosed area that does not have a top, without a muzzle or leash, if the dog remains within his or her sight and only members of the immediate household or persons who are 18 years of age or older are allowed in the enclosure when the dog is present. When being transported, such dogs must be safely and securely restrained within a vehicle.

(c) The owner of a dog who has been declared a “dangerous dog” by Palm Beach County Animal Care & Control must provide the town with a copy of the certificate of registration for the dog from the County, and each annual renewal of the certificate, and a current certificate of rabies vaccination for the dog. The dog must be confined in a proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign at all entry points that informs both children and adults of the presence of a dangerous dog on the property. The dog must have permanent identification on the dog, such as a tattoo on the inside thigh or electronic implantation.

(d) The owner shall immediately notify the Palm Beach County Sheriff’s Office when a dog that has been classified as dangerous by Palm Beach County Animal Care & Control:

- (1) Is loose or unconfined;
- (2) Has bitten a human being or attacked another animal;
- (3) Has been sold, given away, or died;
- (4) Has moved to another address.

(e) If a dog that has previously been declared dangerous attacks or bites a person or a domestic animal without provocation, the owner shall be guilty of a misdemeanor of the first degree, punishable as provided in Sections 775.082 and/or 775.083, Fla. Stat., as amended. If a dog that has previously been declared dangerous attacks and causes severe injury to or death of any human, the owner is guilty of a felony of the third degree, punishable as provided in Sections 775.082, 775.083, and/or 775.084, Fla. Stat., as amended.

### **Sec. 11-19. Impoundment.**

(a) Any law enforcement officer, authorized code compliance officer, authorized Palm Beach County animal control officer, or other authorized agent of the owner, may take impound any animal found in violation of any provisions of this chapter, and relinquish custody and care of the animal to Palm Beach County Animal Care & Control, the North County Humane Society, the Animal Rescue League of Palm Beach County, or any other appropriate animal rescue and/or control agency, as soon as is reasonably possible under the circumstances.

(b) Any law enforcement officer, authorized code compliance officer, authorized Palm Beach County animal control officer, or other authorized agent of the town who impounds or otherwise acquires possession of a dog or cat which has a license tag affixed shall make every effort to notify the owner as soon as is reasonably possible. Notice of the impoundment shall be posted in a conspicuous place in Town Hall in substantially the same form:

### **NOTICE OF IMPOUNDED ANIMAL**

Date: \_\_\_\_\_

To Whom It May Concern:

I, \_\_\_\_\_ the undersigned officer, have this day impounded a dog, cat (circle one) \_\_\_\_\_, described as follows:

Canine: \_\_\_\_\_ Breed (if known): \_\_\_\_\_  
 Feline: \_\_\_\_\_ Breed (if known): \_\_\_\_\_  
Sex: \_\_\_\_\_ Color: \_\_\_\_\_ Approximate Age: \_\_\_\_\_  
Name of Owner (if known): \_\_\_\_\_  
License No.: (if known) \_\_\_\_\_ Microchip No: \_\_\_\_\_  
Name (if known): \_\_\_\_\_  
Distinguishing characteristics (if any): \_\_\_\_\_  
Current location of impoundment of animal: \_\_\_\_\_

Please contact the undersigned officer at (561) \_\_\_\_\_ - \_\_\_\_\_ to make arrangements for the return of your animal. An administrative fee will be charged and must be paid by the owner before the animal will be released into the care, custody, and control of the owner. Proof of ownership, registration, current vaccinations and general fitness to care for the dog will be required and assessed at the time you attempt to retrieve your animal. Please make sure that you bring all supporting documentation and evidence that you are a fit custodian for this animal.

By: \_\_\_\_\_  
Printed Name of Officer: \_\_\_\_\_

(c) At any time prior to an impounded dog or cat being released to Palm Beach County Animal Care & Control, the North County Humane Society, the Animal Rescue League of Palm Beach County, or any other appropriate agency, the owner of the animal may apply for its release. The release of the animal may in the sole discretion of the impounding agency be granted, provided that the agency has reasonable and good cause to believe and determine among other things, that person seeking release of the animal has submitted adequate documentation indicating that: (1) the person is in fact the rightful owner of the animal sought to be released by competent evidence such as a rabies vaccination certificate, sales receipt, affidavits of neighbors, photographs or other documentary evidence; (2) the health, safety, mental and physical well being of the animal is not at risk; (3) the animal will not be neglected or abused; (4) prior to release of the animal that the owner shall pay the town an established administrative fee set by resolution of the town commission and on file in the town clerk's office to cover such items but not limited thereto, as the town's costs incurred in the investigation, capture, board and feed, veterinary expenses, code enforcement fines and costs, and care of the dog or cat during the period of its retention by the town or under its authority; (5) if a dangerous dog is impounded, the owner of must comply with all provisions of this article applicable to dangerous dogs; (6) if an animal which has been subjected to cruelty is impounded, a court of competent jurisdiction must issues a release order, as provided by Section 828.073, Fla. Stat.; (7) if an impounded animal is not vaccinated against rabies, or does not have a valid rabies license tag, the owner must arrange for rabies vaccination and obtain an animal license tag for the animal before the animal will be released.

**Sec. 11-20. Penalties; prima facie evidence of violations.**

Any person who willfully refuses to sign and accept a citation issued by an officer is guilty of a misdemeanor of the second degree, punishable as provided in Section 775.082, and Fla. Stat., as amended, and Section 775.083, Fla. Stat., as amended. In the event any dog or other animal shall be found in violation of the provisions of this chapter, proof of the violation and the identity of the dog or other animal shall be prima facie evidence of the violation of this chapter by the

person owning or having charge of or control of the dog or other animal. In addition to the enforcement of the provisions of this chapter through the town's code compliance division, the town shall have the right to enforce by injunction, or any other appropriate legal means, compliance with the regulations and requirements of this chapter.

**Section 4. Severability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**Section 5. Repeal of Laws in Conflict.** All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 6. Codification.** The Sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "Ordinance" may be changed to "section", "article", or any other appropriate word.

**Section 7. Effective Date.** This Ordinance shall take effect immediately upon adoption.

# TAB 13

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

Meeting Date: May 21, 2008

Agenda Item No. *Tab 13*

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

**SUBJECT:** CRA Alleyway Project Loan

**RECOMMENDED MOTION/ACTION:** Authorize Town Manager to proceed.

Approved by Town Manager *Mark Raymond* Date: *5/14/08*

Name/Title	Date of Actual Submittal	
<b>Originating Department:</b>	Costs: \$  Funding Source: Acct. #	<b>Attachments:</b> Email from Bond Counsel Mark Raymond
Department Review: <input type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ OR Not applicable in this case _____:  Please initial one.

**Summary Explanation/Background:** Last year, the Florida Supreme Court, in the Strand decision, ruled that Community Redevelopment Agencies are not permitted to pledge their Tax Increment Funds (TIF) to pay debt service on loans with a term greater than one year except after approval by referendum election.



In March, 2008, the electors of the Town approved a TIF financing of the CRA Alleyway Improvement project.

When the Finance Director contacted bond counsel to begin the process of obtaining the loan, she was informed that the Strand decision left open the question whether approval by the electors of the Town is sufficient or whether a referendum election in the County may also be required. In other words, Strand failed to address who is entitled to vote in the referendum election and what government(s) must hold an election.

The Strand decision caused considerable consternation in the public finance community, and the Supreme Court decided to reconsider the decision. A hearing was held in January, 2008. The Court was requested to reverse its earlier decision, but failing that to clarify the application of the ruling, including answering the question regarding the conduct of referendum elections. The Court has not rendered a decision.

Because of this outstanding issue, it is not possible for the TIF financing to proceed. However, Bond Counsel has advised that it would be permissible for the Town to borrow funds and for the Town to undertake the CRA project. While the CRA could not be obligated to do so, the CRA would have the discretion, on an annual basis, to make a voluntary contribution to the Town to reimburse the Town for costs of the redevelopment project. An interlocal agreement would be entered into between the Town and the CRA to this effect.

Consensus is sought for approval to proceed with the loan structure described in the pervious paragraph. Resolutions to authorize the loan will be brought to the Commission at a future meeting.

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

Meeting Date: \_\_\_\_\_

Agenda Item No. \_\_\_\_\_

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

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Approved by Town Manager \_\_\_\_\_ Date: \_\_\_\_\_

Name/Title	Date of Actual Submittal	
<b>Originating Department:</b>	Costs: \$ _____ Funding Source: _____ Acct. # _____	<b>Attachments:</b>
Department Review _____ <input checked="" type="checkbox"/> Town Attorney <i>CRB</i> <input type="checkbox"/> Community Affairs _____ <input type="checkbox"/> Community Development _____	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case _____ Please Initial one.

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When the Finance Director contacted bond counsel to begin the process of obtaining the loan, she was informed that the Strand decision left open the question whether approval by the electors of the Town is sufficient or whether a referendum election in the County may also be required. In other words, Strand failed to address who is entitled to vote in the referendum election and what government(s) must hold an election.

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Consensus is sought for approval to proceed with the loan structure described in the pervious paragraph. Resolutions to authorize the loan will be brought to the Commission at a future meeting.

## Maria Davis

---

**From:** Anne Costello  
**Sent:** Wednesday, May 14, 2008 9:15 AM  
**To:** Maria Davis  
**Subject:** FW:

Maria,

Please see the response from Mark Raymond below.

Anne M. Costello  
Director of Finance  
Town of Lake Park  
(561)881-3351  
(561)881-3358 (Fax)  
acostello@lakeparkflorida.gov

-----Original Message-----

**From:** mark.raymond@hkklaw.com [mailto:mark.raymond@hkklaw.com]  
**Sent:** Wednesday, May 14, 2008 9:07 AM  
**To:** Anne Costello  
**Cc:** tbaird@tjbairdlaw.com  
**Subject:** RE:

any cra payment to the city would be voluntary on the part of the cra, and the city and cra would be required to enter into an interlocal agreement providing that any funds given by the cra to the city could only be used byt he city to pay or to reimburse the city for cost of a project included in the approved redevelopment plan.

-----Original Message-----

**From:** Anne Costello [mailto:acostello@lakeparkflorida.gov]  
**Sent:** Tuesday, May 13, 2008 6:00 PM  
**To:** Raymond, Mark E (WPB - X28349)  
**Subject:** RE:

Mark,

I will give you a call in the AM. Maria Davis would like to know if you could provide to us in writing that it is legal to pledge the non-ad valorem revenues for a loan and then have the CRA reimburse /pay the annual debt service to the General fund for this loan. We can talk in the AM.

Anne

Anne M. Costello  
Director of Finance  
Town of Lake Park  
(561)881-3351  
(561)881-3358 (Fax)  
acostello@lakeparkflorida.gov

-----Original Message-----

**From:** mark.raymond@hkklaw.com [mailto:mark.raymond@hkklaw.com]  
**Sent:** Tuesday, May 13, 2008 5:44 PM  
**To:** Anne Costello  
**Subject:**

i MUST'VE WRITTEN YOUR NUMBER DOWN WRONG. JUST TRIED TO CALL YOU. I HAVE TO RUN NOW BUT YOU CAN CALL ME TOMORROW.

Mark E. Raymond  
Holland & Knight LLP  
222 Lakeview Avenue  
Suite 1000

# TAB 14

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

Meeting Date: May 21, 2008

Agenda Item No. *Tab 14*

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

**SUBJECT:** Should the Town step in and clean up abandoned buildings, dirty pools and other nuisances on property that is in foreclosure.

**RECOMMENDED MOTION/ACTION:** Consensus on course of action

Approved by Town Manager *W. Davis* Date: *5/14/08*

<b>Originating Department:</b> Community Development	Costs: \$ N/A Funding Source: Acct. #	Attachments: <b>Memo re: other towns processes</b>
Department Review: <input type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Community Affairs _____ <input checked="" type="checkbox"/> Community Development _____	<input type="checkbox"/> Finance _____ <input checked="" type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ OR Not applicable in this case _____:  Please initial one.

**Summary Explanation/Background:** The Town has the authority to clean up nuisances if the property owner refuses to fix the problem. When the Town steps in to clean up a nuisance a substantial fine is assessed against the property to cover the cost of the clean up. A lien is then filed against the property until such time as the fine is paid by the owner or the property is sold and the fine is paid at the closing. However, a problem occurs when the property is in foreclosure. In this situation the property owner has abandoned the property and is unable to pay the fines. Once the bank or mortgage company takes over the property through foreclosure the fines for cleaning up the property are usually wiped out by the process and the Town does not receive the money it spent on cleaning up the property. Given this situation the Town has two choices: 1) the Town can clean up the dirty pools and yards knowing full well that it will most likely never be reimbursed for the costs incurred in the clean up; or 2) the Town can wait until the bank or mortgage company takes title and then cite them which almost always results in an immediate clean up of the property. So, the question becomes should the Town budget money to clean up these properties?

The cost for a cleanup can run thousands of dollars depending on the severity of the problem.

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

Meeting Date: May 21, 2008

Agenda Item No.

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

**SUBJECT:** Should the Town step in and clean up abandoned buildings, dirty pools and other nuisances on property that is in foreclosure.

**RECOMMENDED MOTION/ACTION:** Consensus on course of action

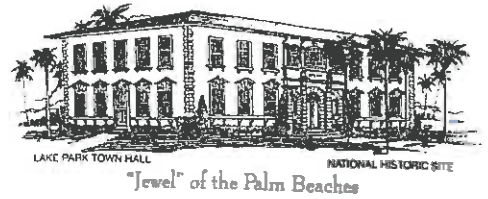
Approved by Town Manager \_\_\_\_\_ Date: \_\_\_\_\_

<b>Originating Department:</b> Community Development	Costs: \$ N/A Funding Source: Acct. #	Attachments:
<b>Department Review:</b> <input checked="" type="checkbox"/> Town Attorney <i>CB</i> <input type="checkbox"/> Community Affairs <input checked="" type="checkbox"/> Community Development	<input type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case _____ Please initial one.

**Summary Explanation/Background:** The Town has the authority to clean up nuisances if the property owner refuses to fix the problem. When the Town steps in to clean up a nuisance a substantial fine is assessed against the property to cover the cost of the clean up. A lien is then filed against the property until such time as the fine is paid by the owner or the property is sold and the fine is paid at the closing. However, a problem occurs when the property is in foreclosure. In this situation the property owner has abandoned the property and is unable to pay the fines. Once the bank or mortgage company takes over the property through foreclosure the fines for cleaning up the property are usually wiped out by the process and the Town does not receive the money it spent on cleaning up the property. Given this situation the Town has two choices: 1) the Town can clean up the dirty pools and yards knowing full well that it will most likely never be reimbursed for the costs incurred in the clean up; or 2) the Town can wait until the bank or mortgage company takes title and then cite them which almost always results in an immediate clean up of the property. So, the question becomes should the Town budget money to clean up these properties?

The cost for a cleanup can run thousands of dollars depending on the severity of the problem.

**Town of Lake Park  
Community Development Department**



*Nadia DiTommaso, Planner*

Memo Date: May 13, 2008

To: Patrick Sullivan, AICP

Re: Foreclosure issues

Patrick: my research disclosed the following regarding the nuisance abatement process in the county and other municipalities for homes in foreclosure.

**(1) PALM BEACH COUNTY**

Code Department: 561-233-5500

→ Does NOT do any cleaning/repairs; cite the property owner

**(2) VILLAGE OF NORTH PALM BEACH**

Code (Melanie): 561-841-3367

→ Although they have nuisance abatement in place, they generally do NOT go in and clean the pools unless it is determined that a life safety issue is present. PBC Environment/Health Dept can be contacted to do courtesy inspections to determine if it's a life safety issue. If it is, either the current mortgage company can be contacted (oftentimes mortgage companies have property preservation companies they work with to do this kind of work), or the Village would go in and clean it up and tie the expenses to the current property owner which may then turn into a lien if it is not paid.

**(3) CITY OF PALM BEACH GARDENS**

Code: 561-799-4245

→ They have an abatement order to go in and clean the pools as well as anything else at the home. They consider this a public safety issue and although they do not have much of a budget for this type of work, they do work with a contractor that has been hired by the City. The property owner is liable for the costs, although in the case of a foreclosure, the City will absorb the costs.

**(4) TOWN OF JUPITER**

Code (Jose): 561-741-2477

Nadia DiTommaso  
Community Development Department  
881-3318 fax 881-3323  
[nditommaso@lakeparkflorida.gov](mailto:nditommaso@lakeparkflorida.gov)



→ The Town is trying to figure out a way to be able to go in and clean, but be reimbursed even if the home is foreclosed upon. At present time, they are leaving the homes as is.

**(5) CITY OF WEST PALM BEACH**

Code: 561-822-1465

→ They consider it a life safety issue and go in and clean the homes (pools). Generally, they lien the property and even in the event of foreclosure whereby all the liens get wiped out, their Attorney can write out a provision which ties any new property owner to the costs incurred by the City. (they were not able to explain how this is done but referred me to their attorney who can be reached at 822-1374)

**(6) TOWN OF LAKE WORTH**

Code (Armand): 561-586-1652

→ If a property has been vacant for an extended amount of time, all they do is go in and secure the pool with a fence. They do not treat the water. They work with the same contractor as West Palm and Boynton Beach. If the fines are wiped out due to a foreclosure they simply absorb the costs.

**(7) CITY OF DELRAY BEACH**

Code: 1-561-243-7219

→ If the condition of the pool is very bad, they will go in and clean it and absorb the costs. They don't even bother posting a lien if the property is heading for foreclosure.

# TAB 15

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

**Meeting Date: May 21, 2008**

Agenda Item No. *Tab 15*

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

**SUBJECT:** 2008 Fireworks Festival expenditures.

**RECOMMENDED MOTION/ACTION:** Staff recommends reducing expenditures for the 2008 Fireworks Festival.

Approved by Town Manager *W. Davis*

Date: *5/15/08*

Greg Dowling, Director of Parks and Recreation  
Name/Title

*5-12-08*  
Date of Actual Submittal

<b>Originating Department:</b>  <b>Parks &amp; Recreation</b>	Costs: \$ 0 Funding Source: Acct. #	<b>Attachments:</b>  Exhibit A
<b>Department Review:</b> <input checked="" type="checkbox"/> Parks & Recreation _____ <input type="checkbox"/> Community Development _____ <input type="checkbox"/> Finance _____	<input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Human Resources _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> Marina _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case _____: Please initial one.

**Summary Explanation/Background:** With the recent budget cuts, staff is recommending reduction in expenditures for the Fireworks Festival scheduled for June 28th. Staff is recommending the elimination of free rides for the kids, VIP area, strolling entertainment, free novelties for residents, and reducing all other miscellaneous expenses. Staff proposes to have only the fireworks show, and a band to perform from 6:00 PM to 9:00 PM (2 hours) before the fireworks show.

# Exhibit A

## Fireworks Festival

EXPENSE	2007 ACTUAL EXPENSE	2008 PROPOSED BUDGET
Music Entertainment	2,000	2,000
Fireworks **	15,000	15,000
Stage	1,175	800
Sunbelt (Generator, Lights)	526	400
Port-o-lets	1,250	1,300
P.B.Post (Ads)	1,036	1,200
Permit (Beer)	25	25
Petty Cash (Beer change)	500	500
Banners	784	700
Home Depot (Misc. equipment)	80	100
Volunteer Donation (Kiwanis)	500	200
Beer (Cost) ***	677	677
DJ (Music during Fireworks)	800	300
Golf Carts (Staff)	420	200
Singer, National Anthem	100	0
Strolling Entertainment	700	0
Children's Magic Show	500	0
Free Kids Rides	2,900	0
Chairs/Tables (VIP area)	659	0
Security	159	0
Neighborhood News Group (Ads)	550	0
Food (VIP area)	980	0
Oriental Trading (VIP/Resident novelties)	231	0
Party Outlet (VIP Supplies)	128	0
T-Shirts (VIP, Staff)	339	0
Wine (VIP area)	78	0
<b>TOTAL</b>	<b>\$ 32,097</b>	<b>\$ 23,402</b>

\* Rough estimate for 2008 proposed budget.

\*\* 2008 Fireworks show based on 2007 contract.

\*\*\* Beer expense based on 2007 show.

# TAB 16

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

Meeting Date: May 21, 2008

Agenda Item No. Tab 16

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

**SUBJECT:** Should domesticated animals be allowed in Town parks with the exception of the marina?

**RECOMMENDED MOTION/ACTION:** consensus

Approved by Town Manager *W. Davis* Date: 5/15/08

<b>Originating Department:</b> Community Development	Costs: \$ N/A Funding Source: Acct. #	Attachments:
<b>Department Review:</b> <input type="checkbox"/> Town Attorney _____ <input type="checkbox"/> Community Affairs _____ <input checked="" type="checkbox"/> Community Development _____	<input checked="" type="checkbox"/> Finance _____ <input type="checkbox"/> Fire Dept _____ <input type="checkbox"/> Library _____ <input type="checkbox"/> PBSO _____	<input type="checkbox"/> Personnel _____ <input type="checkbox"/> Public Works _____ <input type="checkbox"/> Town Clerk _____ <input type="checkbox"/> Town Manager _____
<b>Advertised:</b> Date: _____ Paper: _____ <input type="checkbox"/> Not Required	All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.	Yes I have notified everyone _____ or Not applicable in this case _____:  Please initial one.

**Summary Explanation/Background:** The present ordinance prohibits any domesticated animal from being in any public park of the town, excluding the marina. (Section 18-61) This issue came up during discussions of the new animal ordinance and the commission expressed a desire to discuss whether or not to change our present language and allow animals in our public parks. Staff recommends keeping the present language and continuing the ban on animals in our public parks. Any change to our present ordinance will require an amendment to the ordinance.