

**RESOLUTION NO. 80-11-20**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A CONTRACT WITH FOSTER MARINE CONTRACTORS, INC. AND TO EXECUTE AN INTER-LOCAL AGREEMENT BETWEEN THE TOWN OF LAKE PARK, FLORIDA AND SEACOAST UTILITY AUTHORITY (AUTHORITY) FOR JOINT PARTICIPATION AND PROJECT FUNDING FOR LAKE SHORE DRIVE DRAINAGE IMPROVEMENTS PROJECT BID NUMBER 106-2020; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Lake Park, Florida (hereinafter “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**, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into Inter-local Agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

**WHEREAS**, the Town is empowered to enter into contractual arrangements with public agencies, private corporations or other persons; and

**WHEREAS**, the Town Commission has determined that it requires the services of a qualified and experienced Contractor for a project including new drainage infrastructure, a pump station, a dry detention/bio-swale areas for water quality, and in-line check valves to prevent backflow from the Intracoastal Waterway along a portion of Lake Shore Drive (the Project); and

**WHEREAS**, the Project would involve the reconstruction of Lake Shore Drive with curb and gutter, and sidewalks and improve drainage; and

**WHEREAS**, the Town and the AUTHORITY desire to jointly participate in the construction of utility adjustments to the AUTHORITY’S water main, force main and other Improvements within the Project area, hereinafter referred to as the “Work”; and

**WHEREAS**, both the Town and AUTHORITY declare that it is in the public interest to construct the Work as part of the aforementioned Project; and

**WHEREAS**, the Town has budgeted funds in its current fiscal year budget which are available for the funding of this Contract.

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

**Section 1.** The whereas clauses are true and correct and are incorporated herein.

**Section 2.** The Town Commission hereby authorizes and directs the Mayor to execute a contract with Foster Marine Contractors, Inc., and to execute the inter-local agreement with SEACOAST UTILITY AUTHORITY a copy of which is attached hereto and incorporated herein.

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

The foregoing Resolution was offered by Vice-Mayor Glas-Castro, who moved its adoption. The motion was seconded by Commissioner Linden and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR MICHAEL O'ROURKE	<u>/</u>	<u>  </u>
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	<u>  </u>
COMMISSIONER ERIN FLAHERTY	<u>Absent</u>	<u>  </u>
COMMISSIONER JOHN LINDEN	<u>/</u>	<u>  </u>
COMMISSIONER ROGER MICHAUD	<u>/</u>	<u>  </u>

The Town Commission thereupon declared the foregoing Resolution No. 80-11-20 duly passed and adopted this 16 day of December, 2020.

TOWN OF LAKE PARK, FLORIDA

BY:   
MICHAEL O'ROURKE  
MAYOR

ATTEST:

  
VIVIAN MENDEZ  
TOWN CLERK

Approved as to form and legal sufficiency:

BY:   
THOMAS J. BAIRD  
TOWN ATTORNEY



## AGREEMENT

THIS AGREEMENT made this 16 day of December, 2020 by and between the Town of Lake Park, 535 Park Avenue, Lake Park, Florida, 33403 (hereinafter referred to as "OWNER") and Foster Marine Contractors Inc. (hereinafter referred to as "CONTRACTOR").

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

### ARTICLE I

#### WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: The work will establish and improve the Level of Service of Lake Shore Drive by improving drainage and addressing sea level rise as a result of storm surges, king tides, and climate change. The project includes a new drainage infrastructure, a pump station, a dry detention/bio-swale area for water quality, and in-line check valves to prevent backflow from the Intracoastal Waterway/Lake Worth Lagoon (LWL) and all work included in the attached Interlocal Agreement between Seacoast Utility and the Town of Lake Park. The major items of the project include new roadway drainage, reconstruction of the roadway with curb and gutter, and sidewalks. The project design includes four locations where storm water discharges to the LWL via gravity pipes. Each pipe will include a storm water pollution control structure and an in-line check valve. A 22,500 gmp pump station will be constructed to handle higher sea level conditions. The station will pump water to a new dry detention/bio-swale area to be located in an adjacent park. The detention/bio-swale area will attenuate and treat the stormwater before discharging it to the LWL.

The work includes the reconstruction of Lake Shore Drive from 190 feet south of Date Palm Drive to 65 feet northwest of Castlewood Drive, a distance of 3,250 linear feet. Approximately 30 storm drainage inlets are included in the project which will be located in grassed swale areas. The new storm water carrying pipes include sizes up to 48 inches in diameter.

The work is partially funded with a federal grant. As such, there will be additional documentation requirements. In addition, the project includes water and sewer improvements, and the Town has partnered with Seacoast Utility Authority on these items. The water and sewer components of the project shall be bid as an alternate, and may be part of the scope at the discretion of Seacoast Utility Authority. Alternatively, Seacoast Utility Authority may complete their portion of the work separately.

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

### ARTICLE 2

#### ENGINEER

This project was designed by Baxter and Woodman Consulting Engineers 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 Contract Documents.



## ARTICLE 3

### CONTRACT TIME

**3.1** The Contract Time will commence to run on the thirtieth day after the day indicated in the Notice to Proceed. The Contract Time shall be measured from the date of commencement of the Work. The Work will be substantially complete within 305 calendar days from the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within 335 calendar days from the date when the Contract Time commences to run.

**3.2 LIQUIDATED DAMAGES.** OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and the OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER Two Thousand Dollars (\$2,000.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time for each Phase or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER One Thousand Dollars (\$1,000.00 ) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment. The amounts referenced above are not penalties but are rather Liquidated Damages to the OWNER for its inability to obtain full beneficial use of the project. Liquidated Damages are hereby fixed and agreed upon between parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by the OWNER as a consequence of such delay, and both parties desiring to obviate any question or dispute concerning the amount of said damages and the cost and effect of the failure of the CONTRACTOR to complete the contract on time. The amounts due pursuant to this section shall be deducted from the monies due to the CONTRACTOR or in case no money is due, or the money due the CONTRACTOR is not sufficient, CONTRACTOR shall pay for such amount, not as a penalty, but as liquidated damages. When the OWNER reasonably believes that Substantial Completion will be inexcusably delayed, the OWNER shall be entitled, but not required, to withhold from any amounts otherwise due to the CONTRACTOR an amount then believed by the OWNER to be adequate to recover liquidated damages applicable to such delays. Any liquidated damages pursuant to this section shall not apply to damages other than delay damages.

**3.3 CONTRACTOR'S NOTICE OF CLAIM; WAIVER OF REMEDIES; NO DAMAGES FOR DELAY.** The OWNER shall not be liable for any delay to the CONTRACTOR or the CONTRACTOR's subcontractors. The CONTRACTOR shall not be entitled to an increase in the Contract Sum or payment of compensation of any kind from the OWNER for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, or hindrance from any cause. The CONTRACTOR shall however only be entitled to increase(s) in the Contract Time if and only if said delays, disruptions, interferences or hindrances were caused in whole or in part by



the fraud, bad faith, or active interference by the OWNER. The CONTRACTOR shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay. In case of a delay, the CONTRACTOR shall make a timely written request and in accordance with the Contract Documents, otherwise the claim is waived.

#### **3.4 WAIVER OF CLAIMS FOR CONSEQUENTIAL DAMAGES.**

The CONTRACTOR waives claims against OWNER and ENGINEER for consequential damages arising out of or relating to this Agreement, Contract Documents, and/or the Work. This waiver includes

- 1) damages incurred by CONTRACTOR for rental expenses, income, profit, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- 2) damages incurred by the CONTRACTOR for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit.

### **ARTICLE 4**

#### **CONTRACT PRICE**

**4.1** OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, subject to adjustment as provided therein, the amount of Five-million Four-hundred Seventy-one Thousand Nine-hundred-Fifty-four and no/100 Dollars (\$5,471,954.00) which is based on the Price Schedule attached to the Bid Form.

### **ARTICLES 5**

#### **PAYMENT PROCEDURES**

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

**5.1 PROGRESS PAYMENTS.** OWNER shall make progress payments, as provided below, on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or before the 25<sup>th</sup> business day after the date on which an Application for Payment has been stamped as received by the ENGINEER. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values established pursuant to paragraph 2.8 of the General Conditions and, in the case of unit price work, payments will be based on the number of units completed.

**5.1.1.** Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, and as OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

Retainage often percent (10%) shall be withheld until the Work has reached fifty percent (50%) complete. Thereafter, the Owner shall retain five percent (5%) of the Cost of the Work. The level at which 50% completion of the Work is achieved shall be set forth in the Schedule of

Values established pursuant to paragraph 2.8 of the General Conditions. In the absence of such definition in the Schedule of Values, 50% completion shall be deemed to be the point at which OWNER has expended 50% of the total cost of the Work including existing change orders or modifications.

Once 50% completion has been achieved by CONTRACTOR, CONTRACTOR may request up to one-half of the retainage then held by OWNER. Upon receipt of such request, OWNER shall make a payment to CONTRACTOR, but less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions. Therefore, any disputed amounts will continue to be held by OWNER.

**5.1.2** Upon Substantial Completion, a progress payment will be made in an amount sufficient to increase total payments to CONTRACTOR to 95 % of the Contract Price, less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

**5.2.** FINAL PAYMENT. Upon final completion and acceptance of the Work in accordance with paragraphs 14.13 and 14.14 of the General Conditions, and settlement of all claims, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER in accordance with said paragraphs 14.13 and 14.14.

## ARTICLE 6

### CONTRACTOR'S REPRESENTATION

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

**6.1** CONTRACTOR has examined the Contract documents, the site and locality where the Work is to be performed, the legal requirements (Federal, State and Local laws, ordinances, rules and regulations) and the conditions affecting costs, progress or performance of the Work and has made such independent investigations as CONTRACTOR deems necessary. The CONTRACTOR represents and warrants that it has become familiar with the project, the Contract Documents, and the local conditions under which the project is to be constructed and operated.

**6.2** CONTRACTOR has obtained and reviewed all such examinations, investigations, explorations, tests and studies which pertain to the subsurface or physical conditions at the site or otherwise, and which may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by CONTRACTOR for such purposes.

**6.3** CONTRACTOR has reviewed and checked all information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data



with respect to said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3.1 of the General Conditions.

6.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

6.5 The CONTRACTOR represents and warrants that it has received, reviewed and carefully examined all of the documents which make up this Agreement including but not limited to plans and specifications, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction. If the CONTRACTOR performs any Work when it knew or should have known that it involves an error, inconsistency or omission in the Contract Documents without first providing written notice to the ENGINEER and OWNER, the CONTRACTOR shall be responsible for such Work and pay the cost of correcting same. If applicable, CONTRACTOR has already given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

## ARTICLE 7

### CONTRACT DOCUMENTS

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

- 7.1 This Agreement, consisting of pages A-1 thru A-6 inclusive,
- 7.2 Exhibits to this Agreement inclusive, Schedule A Schedule of Values, Foster Marine Bid Submittal
- 7.3 Public Construction Bond in full contract amount consisting of 1 page(s) including Power of Attorney Forms as applicable),
- 7.4 Notice of Award,
- 7.5 General Conditions, consisting of pages GC-1 through GC-43, inclusive,
- 7.6 Technical Specifications, inclusive,
- 7.7 Drawings, consisting of a cover sheet and sheets numbered G-1A through IR-6 and G-1B through D-9 inclusive, with each sheet bearing the following general title:

TOWN OF LAKE PARK LAKE SHORE DRIVE DRAINAGE IMPROVEMENTS,  
dated July 2020

SEACOAST UTILITY AUTHORITY LAKE SHORE DRIVE WATER MAIN AND  
SANITARY SEWER IMPROVEMENTS, dated July 2020



**7.8** Addenda, numbered 1-3 inclusive,

**7.9** CONTRACTOR's Bids, consisting of the Invitation to Bid, the Instruction to Bidders and the Bid Form,

**7.10** 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, and

**7.11** The documents listed in Article 7 above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.4 and 3.5 of the General Conditions.

## ARTICLE 8

### MISCELLANEOUS

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

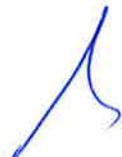
**8.2** No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). 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.

**8.3** CONTRACTOR binds itself, its partners, heirs, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

**8.4** The Contract Documents are incorporated herein and made a part hereof and constitute the entire Agreement between OWNER and CONTRACTOR and may only be altered, amended or repealed by a duly executed written instrument.

**8.5** In the event of a dispute arising out of or relating to the Agreement, the prevailing party shall be entitled to its reasonable costs, including attorneys' fees through all level of appeal.

**8.6** With respect to public records, the CONTRACTOR is required to:



Keep and maintain public records required by the Town to perform the service.

Upon the request of the Town's custodian of public records, provide the Town with such public records within a reasonable time at a cost that does not exceed the costs provided for in Chapter 119, Florida Statutes.

Ensure that any public records that are exempt or confidential from public records disclosure are not disclosed except as authorized by law for the duration of the term of this Agreement, and following completion of this Agreement if the CONTRACTOR does not transfer the records which are part of this Agreement to the Town.

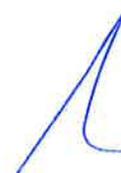
Upon the completion of the term of the Agreement, transfer, at no cost, to the Town all public records in possession of the CONTRACTOR; or keep and maintain the public records associated with the services provided for in the Agreement. If the CONTRACTOR transfers all public records to the Town upon completion of the term of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential from public records disclosure. If the CONTRACTOR keeps and maintains public records upon completion of the term of the Agreement, the CONTRACTOR shall meet all applicable requirements pertaining to the retention of public records. All records stored electronically shall be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

If the CONTRACTOR has questions regarding the application of Chapter 119, Florida Statutes, its duty to provide public records relating to this Agreement, the CONTRACTOR must contact the custodian of public records at: Town Clerk, 535 Park Avenue, Lake Park, Florida 33403, 561-881-3311, [townclerk@lakeparkflorida.gov](mailto:townclerk@lakeparkflorida.gov).

## ARTICLE 9

### INDEMNIFICATION

**9.1** The CONTRACTOR indemnifies and holds harmless OWNER, its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of the Work.



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 or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf,

OWNER:

TOWN OF LAKE PARK

By: [Signature]  
Michael O'Rourke, Mayor  
**TOWN OF LAKE PARK SEAL (SEAL)**

Attest: [Signature]  
Vivian Mendez, Town Clerk

CONTRACTOR:

By: [Signature]  
R. Howard Wight, President  
**SEAL (SEAL)**  
Florida

Attest: [Signature]  
Kevin E Schwiderson, Vice President

Address for giving notices:

Town Clerk  
535 Park Avenue  
Lake Park, Florida 33403

Address for giving notices:

3180 Fairlane Farms Road  
Wellington, FL 33414

**Approved as to legal form and sufficiency**  
[Signature]  
Town Attorney  
Thomas J. Baird

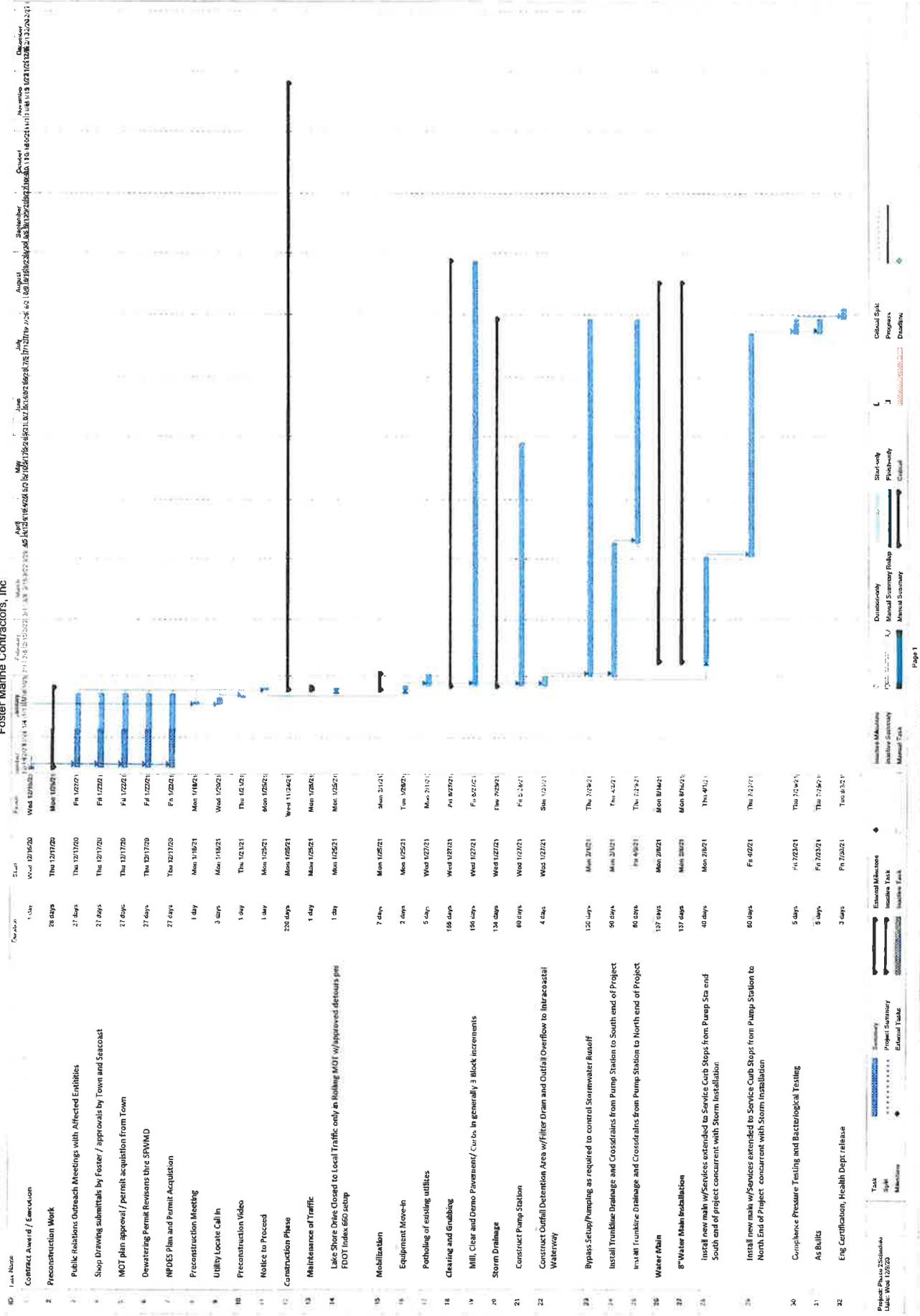
R. Howard Wight, President  
Agent of service in process

(IF CONTACTOR is a corporation, attach evidence of authority to sign).

LICENSE NO: CGC013244

Lake Shore Drive Drainage Improvements  
Town of Lake Park  
Preliminary General Work Schedule

Foster Marine Contractors, Inc.





IF BIDDER is:

**AN INDIVIDUAL**

By (sign here): \_\_\_\_\_

(Print Individual's Name): \_\_\_\_\_

doing business as \_\_\_\_\_

Business address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**A PARTNERSHIP**

\_\_\_\_\_  
(Partnership Name)

By (sign here): \_\_\_\_\_

(Print General Partner's Name): \_\_\_\_\_

Business address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**A CORPORATION**

Foster Marine Contractors, Inc.  
(Corporation Name)

Florida  
(State of Corporation)

By (sign here): \_\_\_\_\_

(Print Name of Person Authorized to Sign): R. Howard Wight

Its: President  
(Print Title of Person Signing if other than the president or vice-president, attach evidence of authority to sign)

Business address: 3180 Fairland Farms Road, Suite 1, Wellington, Florida 33414

Phone Number: (561) 683-0034

~~**A LIMITED LIABILITY COMPANY**~~

\_\_\_\_\_  
(LLC Name)

By (Sign here): \_\_\_\_\_

(Print Name of Person Signing): \_\_\_\_\_

Its: \_\_\_\_\_

(If other than manager, attach evidence of individual's authority to sign)

\_\_\_\_\_  
(Address)

Phone Number: \_\_\_\_\_

**A JOINT VENTURE**

\_\_\_\_\_  
(Joint Venture Name)

By (sign here): \_\_\_\_\_

(Print Name of Person Signing): \_\_\_\_\_

\_\_\_\_\_  
(Address)

Phone Number: \_\_\_\_\_

By (sign here): \_\_\_\_\_

(Print Name of Person Signing) \_\_\_\_\_

\_\_\_\_\_  
(Address)

Phone Number: \_\_\_\_\_

(Each joint venture must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above as to that type of entity).

**DEBARRED FIRMS**

The undersigned hereby certifies that the firm of Foster Marine Contractors, Inc. has not and will not award a subcontractor, in connection with any contract awarded to it as the result of this bid, to any firm that has been debarred for non-compliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964, Executive Order 11246 as amended or any other Federal Law

Foster Marine Contractors, Inc.  
Name of Firm Submitting Bid



R. Howard Wight  
Signature of Authorized Official  
R. Howard Wight

President  
Title

10/2/2020  
Date

December 7, 2020

Town of Lake Park  
535 Park Avenue  
Lake Park, FL 33403

RE: *Authority to Date Bonds and Powers of Attorney*  
Principal: Foster Marine Contractors, Inc.  
Bond No.: 0235359  
Project: Lake Shore Drive Drainage Improvements

To whom it may concern:

Please be advised that as Surety on the above referenced bond, executed on your behalf for this project, we hereby authorize you to date the bonds and the powers of attorney concurrent with the date of the contract agreement.

Once dated, please send a copy of the dated bonds to our office.

Sincerely  
Berkley Insurance Company



Brett A. Ragland  
*Attorney-in-fact*

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***PUBLIC CONSTRUCTION BOND***

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Front Page of Bond No. 0235359  
Issued in Accordance with Florida Statute Chapter 255.05(1)(a) for Public Work

CONTRACTOR: Foster Marine Contractors, Inc.  
3180 Fairlane Farms Road, Wellington, FL 33414  
(561) -683-0034

SURETY COMPANY: Berkley Insurance Company  
475 Steamboat Road, Greenwich, CT 06830  
(203)542-3800

OWNER NAME: Town of Lake Park  
535 Park Avenue, Lake Park, FL 33403  
(561) 881-3311

CONTRACTING PUBLIC ENTITY: **N/A**  
(If different from the owner)

CONTRACT AMOUNT: \$ 5,471,954.00

CONTRACT NO., PROJECT: Lake Shore Drive Drainage Improvements

PROJECT LOCATION: Lake Shore Dr. from South of Date Palm Dr. to NW of Castlewood Dr.

SURETY AGENT: Johnson & Company  
801 North Orange Ave., Suite 510, Orlando, FL 32801  
(407) 843-1120

This bond is given to comply with section 255.05 Florida Statutes, and any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2) and 255.05(10), Florida Statutes.

This is the front page of the bond, regardless of any page number(s) that may be pre-printed thereon.

BOND NO: 0235359

**PUBLIC CONSTRUCTION BOND**

Foster Marine Contractors, Inc.

BY THIS BOND, we, a Florida corporation with a principal business address of 3180 Fairlane Farms Rd, Wellington, FL 33414, as Principal, and Berkley Insurance Company

a, Delaware corporation with a principal business address of 475 Steamboat Road, Greenwich, CT 06830, as Surety,

are bound to **Town of Lake Park**, as Owner, whose address is 535 Park Avenue, Lake Park, Florida, 33403, in the sum of \$ 5,471,954.00, payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

**THE CONDITION OF THIS BOND** is that if Principal:

1. Performs the contract dated \_\_\_\_\_, \_\_\_\_\_, between Principal and Owner with the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payment to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs and attorneys' fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond. Any claimant should refer to Section 255.05, Florida Statutes, for provisions regarding notice and time limitations.

Signed and sealed this 8<sup>th</sup> day of DECEMBER, 2010, 2010.

**PRINCIPAL:**

Foster Marine Contractors, Inc.

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

R. HOWARD LITTLE  
Name President

(CORPORATE SEAL)

**SURETY:**

Berkley Insurance Company

By: Brett A. Ragland  
Signature

Brett A. Ragland  
Name Attorney-in-Fact  
& Florida Licensed Resident Agent  
Inquiries: 407-843-1120

(CORPORATE SEAL)

POWER OF ATTORNEY  
BERKLEY INSURANCE COMPANY  
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: *Joseph D. Johnson, Jr.; Brett A. Ragland; Francis T. O'Reardon; Joseph D. Johnson, III; Kanani H. Cordero; or Tyler Ragland of Joseph D. Johnson & Company of Orlando, FL* its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **One Hundred Million and 00/100 U.S. Dollars (U.S.\$100,000,000.00)**, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

**RESOLVED**, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

**RESOLVED**, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

**RESOLVED**, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

**RESOLVED**, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 3rd day of March, 2020.

Attest:

Berkley Insurance Company

(Seal)

By

Ira S. Lederman  
Executive Vice President & Secretary

By

Jeffrey M. Hafter  
Senior Vice President

**WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.**

STATE OF CONNECTICUT )

) ss:

COUNTY OF FAIRFIELD )

Sworn to before me, a Notary Public in the State of Connecticut, this 3rd day of March, 2020, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C RUNDBAKEN  
NOTARY PUBLIC  
CONNECTICUT  
MY COMMISSION EXPIRES  
APRIL 30, 2024

Maria C. Rundbaker  
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this \_\_\_\_\_ day of \_\_\_\_\_.

(Seal)

Vincent P. Forte  
Vincent P. Forte

WARNING - Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is void unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and verification instructions (on reverse) must be in blue ink.

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***PUBLIC CONSTRUCTION BOND***

---

Front Page of Bond No. 0235359  
Issued in Accordance with Florida Statute Chapter 255.05(1)(a) for Public Work

CONTRACTOR: Foster Marine Contractors, Inc.  
3180 Fairlane Farms Road, Wellington, FL 33414  
(561) -683-0034

SURETY COMPANY: Berkley Insurance Company  
475 Steamboat Road, Greenwich, CT 06830  
(203)542-3800

OWNER NAME: Town of Lake Park  
535 Park Avenue, Lake Park, FL 33403  
(561) 881-3311

CONTRACTING PUBLIC ENTITY: **N/A**  
(If different from the owner)

CONTRACT AMOUNT: \$ 5,471,954.00

CONTRACT NO., PROJECT: Lake Shore Drive Drainage Improvements

PROJECT LOCATION: Lake Shore Dr. from South of Date Palm Dr. to NW of Castlewood Dr.

SURETY AGENT: Johnson & Company  
801 North Orange Ave., Suite 510, Orlando, FL 32801  
(407) 843-1120

This bond is given to comply with section 255.05 Florida Statutes, and any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2) and 255.05(10), Florida Statutes.

This is the front page of the bond, regardless of any page number(s) that may be pre-printed thereon.

BOND NO: 0235359

**PUBLIC CONSTRUCTION BOND**

Foster Marine Contractors, Inc.

BY THIS BOND, we, a Florida corporation with a principal business address of 3180 Fairlane Farms Rd, Wellington, FL 33414, as Principal, and Berkley Insurance Company

a, Delaware corporation with a principal business address of 475 Steamboat Road, Greenwich, CT 06830, as Surety,

are bound to **Town of Lake Park**, as Owner, whose address is 535 Park Avenue, Lake Park, Florida, 33403, in the sum of \$ 5,471,954.00, payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

**THE CONDITION OF THIS BOND** is that if Principal:

1. Performs the contract dated \_\_\_\_\_, \_\_\_\_\_, between Principal and Owner with the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payment to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs and attorneys' fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond. Any claimant should refer to Section 255.05, Florida Statutes, for provisions regarding notice and time limitations.

Signed and sealed this 8<sup>TH</sup> day of DECEMBER, 2013.

**PRINCIPAL:**

Foster Marine Contractors, Inc.

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

R. HOWARD WILKIN  
Name President

(CORPORATE SEAL)

**SURETY:**

Berkley Insurance Company

By: Brett A. Ragland  
Signature

Brett A. Ragland  
Name Attorney-in-Fact  
& Florida Licensed Resident Agent  
Inquiries: 407-843-1120

(CORPORATE SEAL)

POWER OF ATTORNEY  
BERKLEY INSURANCE COMPANY  
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: *Joseph D. Johnson, Jr.; Brett A. Ragland; Francis T. O'Reardon; Joseph D. Johnson, III; Kanani H. Cordero; or Tyler Ragland of Joseph D. Johnson & Company of Orlando, FL* its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **One Hundred Million and 00/100 U.S. Dollars (U.S.\$100,000,000.00)**, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

**RESOLVED**, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

**RESOLVED**, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

**RESOLVED**, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

**RESOLVED**, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 3rd day of March, 2020.

Attest:

Berkley Insurance Company

(Seal)

By

Ira S. Lederman  
Executive Vice President & Secretary

By

Jeffrey M. Hafter  
Senior Vice President

**WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.**

STATE OF CONNECTICUT )

) ss:

COUNTY OF FAIRFIELD )

Sworn to before me, a Notary Public in the State of Connecticut, this 3rd day of March, 2020, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C RUNDBAKEN  
NOTARY PUBLIC  
CONNECTICUT  
MY COMMISSION EXPIRES  
APRIL 30, 2024

Maria C. Rundbaken  
Notary Public, State of Connecticut

**CERTIFICATE**

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this \_\_\_\_\_ day of \_\_\_\_\_

(Seal)

Vincent P. Forte  
Vincent P. Forte

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**SCHEDULE A**

**SCHEDULE OF BID ITEMS**

The BIDDER agrees to execute agreement in strict accordance with the Contract Documents in the full amount of the Contract Price.

<b>Item No.</b>	<b>Item Description</b>	<b>Unit</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Extended Cost</b>
<b>GENERAL</b>					
1	Mobilization, Bonds, Insurance	LS	1	\$310,000.00	\$310,000.00
2	Maintenance of Traffic	LS	1	\$35,000.00	\$35,000.00
3	As-Built Record Drawings	LS	1	\$32,000.00	\$32,000.00
4	NPDES Permit/Erosion Protection Measures	LS	1	\$13,500.00	\$13,500.00
5	Professional Audio/Video of Construction Site	LS	1	\$3,000.00	\$3,000.00
<b>ROADWAY</b>					
6	Remove & Dispose of Existing Pavement Section (varying thickness)	SY	<b>10,100</b>	\$3.00	\$30,300.00
7	1-1/2" Superpave Asphalt Concrete SP 12.5	TONS	825	\$121.00	\$99,825.00
8	<b>6<sup>22</sup> Optional Base Group 9</b> (Type B-12.5) w/RC-70 Prime Coat	SY	10,000	\$42.00	\$420,000.00
9	<b>Additional Type B-12.5 w/ RCR70 Prime Coat for Roadway Overbuild in South-Bound Lane</b>	<b>CY</b>	<b>150</b>	\$230.00	\$34,500.00
10	12" Compacted Subgrade (LBR 40)	SY	<b>6,500</b>	\$5.65	\$36,725.00
11	<b>Embankment - Compact In Place (Material Used from On-Site)</b>	<b>CY</b>	<b>300</b>	<b>\$7.00</b>	<b>\$2,100.00</b>
12	<b>Embankment - Compact In Place (Material Brought in from Off-Site)</b>	<b>CY</b>	<b>4,200</b>	<b>\$15.00</b>	<b>\$63,000.00</b>

<b>Item No.</b>	<b>Item Description</b>	<b>Unit</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Extended Cost</b>
<b>13</b>	Remove & <b>Dispose</b> Existing Concrete Curbing (All Types)	LF	1,700	\$5.50	\$ 9,350.00
<b>14</b>	Remove & <b>Dispose</b> Existing Concrete Sidewalk/ Driveway (4"-6" Thick)	SY	4,900	\$8.90	\$43,610.00
<b>15</b>	Concrete Sidewalk:, 4" Thick, 3000 PSI	SF	41,850	\$4.10	\$171,585.00
<b>16</b>	Concrete Driveway, 6" Thick, 3000 PSI	SF	18,000	\$4.86	\$87,480.00
<b>17</b>	Decorative Asphalt Concrete at Cross-Walks	SY	170	\$150.00	\$25,500.00
<b>18</b>	Solar-Powered In-Pavement Lighting System with Motion-Activated Sensors at Cross-Walks (Dwg. C-3 & C-4)	EA	2	\$26,000.00	\$52,000.00
<b>19</b>	Type FCurb & Gutter	LF	6,200	\$16.50	\$ 102,30 0.00
<b>20</b>	Header Curb	LF	25	\$ 30.00	\$ 750.00
<b>21</b>	Drainage Concrete Apron (Curb Openings & Inlet Structures)	SF	200	\$12.25	\$2,450.00
<b>22</b>	Curb Ramp with ADA-Compliant Tactile Surface Mat per FDOT Index 304	EA	28	\$1,000.00	\$ 28,000.00
<b>23</b>	Furnish & Install Sod (St. Augustine)	<b>SY</b>	2,750	\$6.00	\$ 16,500.00
<b>STRIPING / SIGNAGE</b>					
<b>24</b>	Retro Reflective Pavement Markers (RPMs)	EA	180	\$5.60	\$1,008.00
<b>25</b>	6" Double Yellow Thermo	LF	2,850	\$ 2.10	\$ 5,98 5. 00
<b>26</b>	6" Single White Thermo	LF	2,400	\$ 1.05	\$ 2,520.00
<b>27</b>	12" Single White Thermo	LF	750	\$ 2.10	\$ 1,575.00
<b>28</b>	18" Single White Thermo at 10'O.C.	LF	225	\$32.00	\$7,200.00
<b>29</b>	24" Stop Bar White Thermo	LF	130	\$ 7.00	\$ 910.00
<b>30</b>	6" Single Blue Thermo	LF	170	\$ 3.15	\$ 535.50
<b>31</b>	Handicap Parking Symbol (White Thermo)	EA	2	\$140.00	\$ 280.00

Item No.	Item Description	Unit	Estimated Quantity	Unit Price	Extended Cost
<b>32</b>	Remove Existing Sign, Salvage & Return to Town	EA	54	\$165.00	\$8,910.00
<b>33</b>	Furnish & Install New Sign	EA	19	\$185.00	\$3,515.00
<b>34</b>	Furnish & Install New Solar-Powered R1 -1 Sign (Dwg. SM-2)	EA	3	\$3,100.00	\$9,300.00
<b>35</b>	Furnish & Install New Sign Post	EA	20	\$205.00	\$4,100.00
<b>36</b>	Remove & Dispose of Existing Sign Post	EA	61	\$80.00	\$4,880.00
<b>37</b>	Relocate Existing Sign to New Location	EA	22	\$95.00	\$2,090.00
<b>STORMWATER</b>					
<b>38</b>	Remove Existing Drainage Structure	EA	19	\$800.00	\$15,200.00
<b>39</b>	Remove Existing Drainage Pipe (12"-30")	LF	1,540	\$21.00	\$32,340.00
<b>40</b>	Type C Inlet (D-1, D-3, D-4, D-6, D-7, D-9, D-10, D-12, D-14, D-17, D-22, D-25, D-26, D-29, D-30, D-32, D-33, D-36, D-38, D-39, D-41)	EA	14	\$3,900.00	\$54,600.00
<b>41</b>	Type C Curb Inlet (D-18)	EA	1	\$ 5,400.00	\$5,400.00
<b>42</b>	Type E Curb Inlet (D-19)	EA	1	\$ 4,700.00	\$ 4,700.00
<b>43</b>	4' Dia. MH (D-43)	EA	1	\$ 4,300.00	\$4,300.00
<b>44</b>	4' Dia MH Inlet (D-21)	EA	1	\$ 3,900.00	\$ 3,900.00
<b>45</b>	5' Dia Type J Bottom with Curb Inlet Top (D-23)	EA	1	\$6,500.00	\$6,500.00
<b>46</b>	5' Dia. Conflict MH (D-24)	EA	1	\$ 9,400.00	\$9,400.00
<b>47</b>	6' Dia. Type J Bottom w/ Curb Inlet Top Conflict Structure (D-31)	EA	1	\$10,000.00	\$10,000.00
<b>48</b>	5' x 4' Type J Bottom Inlet Top Conflict Structure (D-8)	EA	1	\$9,800.00	\$9,800.00
<b>49</b>	6' Dia. Type J Bottom w/ Curb Inlet Top (D-5, D-16, D-27, D-40)	EA	4	\$ 5,800.00	\$23,200.00
<b>50</b>	5' x 4' Type J Bottom Inlet w/PRB (D-2)	EA	1	\$8,100.00	\$8,100.00
<b>51</b>	6' x 5' Type J Bottom w/ Curb Inlet Top (D-13, D-	EA	2	\$11,000.00	\$22,000.00

<b>Item No.</b>	<b>Item Description</b>	<b>Unit</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Extended Cost</b>
	15)				
<b>52</b>	6' x 5' Type J Bottom w/ Curb Inlet Top & PRB (D-34)	EA	1	\$11,800.00	\$ 11,800.00
<b>53</b>	6' x 5' Type J Bottom w/ Drop Curb Inlet & PRB (D-11)	EA	1	\$11,700.00	\$ 11,700.00
<b>54</b>	6' x 5' Type J Bottom w/ Inlet & PRB (D-20)	EA	1	\$9,700.00	\$ 9,700.00
<b>55</b>	6' x 8' Type J Bottom with Inlet Top (D-37)	EA	1	\$14,300.00	\$ 14,300.00
<b>56</b>	6' Dia Manhole (D-28, D- 42)	EA	2	\$11,000.00	\$ 22,000.00
<b>57</b>	6' Dia. Conflict Manhole (D-35)	EA	1	\$14,250.00	\$ 14,250.00
<b>58</b>	Yard Drain System	EA	9	\$2,500.00	\$ 22,500.00
<b>59</b>	Connect Existing Drainage Pipe to New Drainage Structure	EA	7	\$2,500.00	\$ 17,500.00
<b>60</b>	12" PVC (A-2000)	LF	6	\$250.00	\$ 1,500.00
<b>61</b>	15" PVC (A-2000)	LF	48	\$68.00	\$ 3,264.00
<b>62</b>	15"RCP	LF	421	\$72.00	\$ 30,312.00
<b>63</b>	18" RCP	LF	711	\$95.00	\$ 67,545.00
<b>64</b>	24"RCP	LF	149	\$85.00	\$ 12,665.00
<b>65</b>	30"RCP	LF	257	\$111.00	\$ 28,527.00
<b>66</b>	36"RCP	LF	500	\$138.00	\$ 69,000.00
<b>67</b>	42"RCP	LF	1,273	\$160.00	\$ 203,680.00
<b>68</b>	48"RCP	LF	845	\$ 195.00	\$ 164,775.00
<b>69</b>	72"RCP	LF	40	\$ 520.00	\$ 20,800.00

<b>Item No.</b>	<b>Item Description</b>	<b>Unit</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Extended Cost</b>
<b><u>70</u></b>	Stormwater Pump Station (includes wetwell, Primary Submersible Electric Pump No. 2, all pump cans, all discharge pipes, all flap gates, trash rack, grating hatch covers, shoring, excavation, dewatering, cast in place concrete and backfill, etc.)	LS	1	\$642,000.00	\$ 642,000.00
<b><u>71</u></b>	Stormwater Pump Station - Electrical and Controls (including Motor Control Center, SS Rack, Meter Can, Disconnect, Service Light, Stilling Well, and Nema 4X 316 SS Control Panel with Generator Receptacle, Surge Arrestor, Phase Monitor, Soft Starts, GFI Receptacle, Conduit, FPL Service Point, Triplex Pump Station Controller including Level Transmitters and Backup Floats, etc.)	LS	1	\$ 121,000.00	\$121,000.00
<b><u>72</u></b>	Rock Riprap with Filter Fabric	LS	1	\$13,000.00	\$ 13,000.00
<b><u>73</u></b>	Retaining Walls	EA	2	\$12,500.00	\$ 25,000.00
<b><u>74</u></b>	Seawall Repair	LS	1	\$ 2,000.00	\$ 2,000.00
<b><u>75</u></b>	Excavation and Grading Detention Area	CY	1,467	\$25.00	\$36,675.00
<b><u>76</u></b>	Sod Detention Area	SY	3,000	\$5.00	\$ 15,000.00
<b><u>77</u></b>	24" Inline WaSTOP Valve	EA	1	\$ 12,000.00	\$12,000.00
<b><u>78</u></b>	30" Inline WaSTOP Valve	EA	3	\$ 45,000.00	\$ 135,000.00

Item No.	Item Description	Unit	Estimated Quantity	Unit Price	Extended Cost
<b>79</b>	Stonewater Bypass Pumping	LS	1	\$25,000.00	\$ 25,000.00
<b>80</b>	Swale Regrading and Sod	SY	3,500	\$8.25	\$ 28,875.00
<b>81</b>	Flowable Fill	CY	75	\$ 180.00	\$ 13,500.00
<b>82</b>	Remove Existing Trench Drain (including open-cut pavement repair) (Dwg. C-6)	LS	1	\$ 750.00	\$ 750.00
<b>83</b>	Coordination with FP&L and Comcast for Utility Underground Relocations	LS	1	\$1,000.00	\$1,000.00
<b>STREET LIGHTING</b>					
<b>84</b>	2" PVC Conduit	LF	6,500	\$14.25	\$ 92,625.00
<b>85</b>	Pull Box 14"x24"	LF	50	\$ 500.00	\$ 25,000.00
<b>LANDSCAPING AND IRRIGATION</b>					
<b>86</b>	Clearing & Grubbing	LS	1	\$ 130,000.00	\$ 130,000.00
<b>87</b>	Landscaping	LS	1	\$ 200,000.00	\$ 200,000.00
<b>88</b>	Fences (Pump Station and Bioswale)	LS	1	\$27,500.00	\$ 27,500.00
<b>89</b>	Irrigation in Lake Shore Drive R/W	LS	1	\$105,000.00	\$ 105,000.00
<b>90</b>	Irrigation in Bioswale	LS	1	\$8,500.00	\$ 8,500.00
<b>ALLOWANCES</b>					
<b>91</b>	FPL <b>Proposed</b> Lighting & Electrical Service to Pump Station Allowance	AL	1	<b>\$50:000.00</b>	<b>\$503000.00</b>
<b>92</b>	Undefined Underground Condition Allowance	AL	1	ilso:000.00	<b>\$150:000.00</b>
<b>93</b>	<b>Permit Fee Allowance</b>	<b>AL</b>	<b>1</b>	<b>\$89:892.50</b>	<b>\$89:892.50</b>

TOTAL BASE BID ITEMS 1 THROUGH **93** \$4,556,859.00

(IN NUMBERS)

TOTAL BASE BID ITEMS 1 THROUGH **93** (IN WORDS) Four Million Five Hundred Fifty-Six Thousand Eight Hundred Fifty-Nine Dollars and Zero Cents

Item No.	Item Description	Unit	Estimated Quantity	Unit Price	Extended Cost
<b>ALTERNATE BID ITEMS</b>					
<b>BID ALTERNATE NO. 1</b>					
A1-1	Stormwater Pump Station Primary Submersible Electric Pump No. 1	LS	1	\$74,000.00	\$74,000.00
A1-2	Stormwater Pump Station Duty Submersible Electric Pump No. 3	LS	1	\$93,000.00	\$93,000.00
<b>BID ALTERNATE NO. 2</b>					Bid Alternate 1 Total
<b>SANITARY SEWER</b>					
A2-1	Remove Existing Gravity Sanitary Sewer Main	LF	550	\$5.00	\$2,750.00
A2-2	Remove Existing Sanitary Sewer Manhole	EA	4	\$800.00	\$3,200.00
A2-3	4' Dia. MR (8'-10')	EA	2	\$11,500.00	\$23,000.00
A2-4	Connect New/ Existing Sanitary Sewer Main to New/ Existing Sanitary SewerMH	EA	2	\$1,300.00	\$2,600.00
A2-5	8" PVC SDR 26 Sanitary Sewer Pipe (6'-8')	LF	265	\$67.00	\$17,755.00
A2-6	8" PVC SDR 26 Sanitary Sewer Pipe (8'-10')	LF	260	\$ 80.00	\$20,800.00
A2-7	Remove Existing Sewer Lateral & Install 4" Single Sanitary Sewer Lateral w/ Clean-Out	EA	3	\$2,100.00	\$6,300.00
A2-8	Remove Existing Sewer Lateral & Install 8" Sanitary Sewer Lateral w/ Clean-Out	EA	1	\$2,900.00	\$2,900.00
A2-9	Remove Existing Sewer Lateral & Install 10" Single Sanitary Sewer Lateral & Connect to Existing Lateral atROWLine	EA	1	\$3,600.00	\$3,600.00

\$167,000.00

<b>Item No.</b>	<b>Item Description</b>	<b>Unit</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Extended Cost</b>
<b><u>70</u></b>	Stormwater Pump Station (includes wetwell, Primary Submersible Electric Pump No. 2, all pump cans, all discharge pipes, all flap gates, trash rack, grating hatch covers, shoring, excavation, dewatering, cast in place concrete and backfill, etc.)	LS	1	\$642,000.00	\$ 642,000.00
<b><u>71</u></b>	Stormwater Pump Station - Electrical and Controls (including Motor Control Center, SS Rack, Meter Can, Disconnect, Service Light, Stilling Well, and Nema 4X 316 SS Control Panel with Generator Receptacle, Surge Arrestor, Phase Monitor, Soft Starts, GFI Receptacle, Conduit, FPL Service Point, Triplex Pump Station Controller including Level Transmitters and Backup Floats, etc.)	LS	1	\$ 121,000.00	\$121,000.00
<b><u>72</u></b>	Rock Riprap with Filter Fabric	LS	1	\$13,000.00	\$ 13,000.00
<b><u>73</u></b>	Retaining Walls	EA	2	\$12,500.00	\$ 25,000.00
<b><u>74</u></b>	Seawall Repair	LS	1	\$ 2,000.00	\$ 2,000.00
<b><u>75</u></b>	Excavation and Grading Detention Area	CY	1,467	\$25.00	\$36,675.00
<b><u>76</u></b>	Sod Detention Area	SY	3,000	\$5.00	\$ 15,000.00
<b><u>77</u></b>	24" Inline WaSTOP Valve	EA	1	\$ 12,000.00	\$12,000.00
<b><u>78</u></b>	30" Inline WaSTOP Valve	EA	3	\$ 45,000.00	\$ 135,000.00

Item No.	Item Description	Unit	Estimated Quantity	Unit Price	Extended Cost
<b>79</b>	Stonewater Bypass Pumping	LS	1	\$25,000.00	\$ 25,000.00
<b>80</b>	Swale Regrading and Sod	SY	3,500	\$8.25	\$ 28,875.00
<b>81</b>	Flowable Fill	CY	75	\$ 180.00	\$ 13,500.00
<b>82</b>	Remove Existing Trench Drain (including open-cut pavement repair) (Dwg. C-6)	LS	1	\$ 750.00	\$ 750.00
<b>83</b>	Coordination with FP&L and Comcast for Utility Underground Relocations	LS	1	\$1,000.00	\$1,000.00
<b>STREET LIGHTING</b>					
<b>84</b>	2" PVC Conduit	LF	6,500	\$14.25	\$ 92,625.00
<b>85</b>	Pull Box 14"x24"	LF	50	\$ 500.00	\$ 25,000.00
<b>LANDSCAPING AND IRRIGATION</b>					
<b>86</b>	Clearing & Grubbing	LS	1	\$ 130,000.00	\$ 130,000.00
<b>87</b>	Landscaping	LS	1	\$ 200,000.00	\$ 200,000.00
<b>88</b>	Fences (Pump Station and Bioswale)	LS	1	\$27,500.00	\$ 27,500.00
<b>89</b>	Irrigation in Lake Shore Drive R/W	LS	1	\$105,000.00	\$ 105,000.00
<b>90</b>	Irrigation in Bioswale	LS	1	\$8,500.00	\$ 8,500.00
<b>ALLOWANCES</b>					
<b>91</b>	FPL <b>Proposed</b> Lighting & Electrical Service to Pump Station Allowance	AL	1	<b>\$50:000.00</b>	\$503000.00
<b>92</b>	Undefined Underground Condition Allowance	AL	1	ilso:000.00	<b>\$150:000.00</b>
<b>93</b>	<b>Permit Fee Allowance</b>	<b>AL</b>	<b>1</b>	<b>\$89:892.50</b>	<b>\$89:892.50</b>

TOTAL BASE BID ITEMS 1 THROUGH **93**

\$4,556,859.00

(IN NUMBERS)

TOTAL BASE BID ITEMS 1 THROUGH **93** (IN WORDS) Four Million Five Hundred Fifty-Six Thousand Eight Hundred Fifty-Nine Dollars and Zero Cents

Item No.	Item Description	Unit	Estimated Quantity	Unit Price	Extended Cost
<b>ALTERNATE BID ITEMS</b>					
<b>BID ALTERNATE NO. 1</b>					
A1-1	Stormwater Pump Station Primary Submersible Electric Pump No. 1	LS	1	\$74,000.00	\$74,000.00
A1-2	Stormwater Pump Station Duty Submersible Electric Pump No. 3	LS	1	\$93,000.00	\$93,000.00
<b>BID ALTERNATE NO. 2</b>					Bid Alternate 1 Total
<b>SANITARY SEWER</b>					
A2-1	Remove Existing Gravity Sanitary Sewer Main	LF	550	\$5.00	\$2,750.00
A2-2	Remove Existing Sanitary Sewer Manhole	EA	4	\$800.00	\$3,200.00
A2-3	4' Dia. MR (8'-10')	EA	2	\$11,500.00	\$23,000.00
A2-4	Connect New/ Existing Sanitary Sewer Main to New/ Existing Sanitary SewerMH	EA	2	\$1,300.00	\$2,600.00
A2-5	8" PVC SDR 26 Sanitary Sewer Pipe (6'-8')	LF	265	\$67.00	\$17,755.00
A2-6	8" PVC SDR 26 Sanitary Sewer Pipe (8'-10')	LF	260	\$ 80.00	\$20,800.00
A2-7	Remove Existing Sewer Lateral & Install 4" Single Sanitary Sewer Lateral w/ Clean-Out	EA	3	\$2,100.00	\$6,300.00
A2-8	Remove Existing Sewer Lateral & Install 8" Sanitary Sewer Lateral w/ Clean-Out	EA	1	\$2,900.00	\$2,900.00
A2-9	Remove Existing Sewer Lateral & Install 10" Single Sanitary Sewer Lateral & Connect to Existing Lateral atROWLine	EA	1	\$3,600.00	\$3,600.00

\$167,000.00



Public Works  
Department

Oct. 19, 2020

**NOTICE OF INTENT TO AWARD**  
ITB 106-2020 – Lake Shore Drive Drainage Improvements

To All Interested Parties,

Thank you for submitting your response to ITB 106-2020, Lake Shore Drive Drainage Improvements, dated Oct. 2, 2020. The Town received seven responsive Bids, which have been reviewed in accordance with the bid documents. We announce our intent to award a contract to:

**FOSTER MARINE CONTRACTORS, INC.**  
3180 Fairlane Farms Rd., Suite 1  
Wellington, Florida 33414

We would like to thank all vendors for their time and effort in preparing a response to this bid. We appreciate your interest in doing business with the Town of Lake Park.

Sincerely,

*Mitch Abdelmessih*

Mitch Abdelmessih  
Project Manager- Public Works Department

ATTACHED – The Engineer of Record recommendation letter and bid tabulation for ITB 106-2020 – Lake Shore Drive Drainage Improvements.

650 Old Dixie Highway  
Lake Park, FL 33403  
Phone: (561) 881-3343  
Fax: (561) 881-3349

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[www.lakeparkflorida.gov](http://www.lakeparkflorida.gov)

October 9, 2020

John D'Agostino, Town Manager Town  
of Lake Park  
535 Park Avenue  
Lake Park, FL 33403.

Rim Bishop, Executive Director  
Seacoast Utility Authority  
4200 Hood Road  
Palm Beach Gardens, FL 33410

**Subject:           Town of Lake Park and Seacoast Utility Authority Lake  
Shore Drive Drainage and Utility Improvements Bid  
Evaluation**

Dear Mr. D'Agostino and Mr. Bishop:

On Friday, October 2, 2020, at 1:00 PM, bids were received by the Town of Lake Park Lake Shore Drive Drainage and Utility Improvement Project. Seven (7) bids were received as follows:

Name of Bidder	Base Bid Total Cost	Base Bid + Alternate 1 & 2 Total Cost
1. Foster Marine Contractors, Inc.	\$4,556,859.00	\$5,471,954.00
2. DP Development, LLC	\$4,660,209.99	\$5,558,977.34
3. Hinterland Group, Inc.	\$4,917,963.50	\$6,023,313.50
4. DS Eakins Construction Corp.	\$5,403,570.75	\$6,622,093.25
5. Gibbs & Register	\$5,789,534.50	\$6,731,635.50
6. Ferreira Construction Southern Division Co., Inc.	\$6,856,420.62	\$7,876,938.92
7. Man Con Inc.	\$7,122,888.00	\$8,417,126.50

Baxter & Woodman has reviewed the bid proposals submitted by each of the contractors and produced a Bid Tab, attached to this letter. One mathematical error was found in the bid submitted by Ferreira Construction Southern Division Co., Inc. Our bid tabulation determined their base bid to be \$6,856,420.62 while their bid submittal stated a base bid total of \$5,943,668.50.

The following summarizes our findings for the low bidder (Foster Marine Contractors, Inc.):

- The Contractor acknowledged Addenda No. 1, 2, and 3.
- The Contractor's office is located in Wellington, Florida.
- The Contractor has been in business for over 50 years.
- The Contractor's bid bond for 5% of the bid payment.
- The Schedule of Bid Prices was filled out correctly.
- The previous work experience provided by the Contractor was determined to be satisfactory.

Based on the specific project experience qualifications criteria established in the Bid Documents and based on Baxter & Woodman's review of the Bid Proposal provided by Foster Marine Contractors, Inc., we have determined that Foster Marine Contractors, Inc., is responsive, responsible and qualified to meet the contract requirements for the Base Bid, Alternate 1 and Alternate 2.

Should you have any questions regarding the information presented, please contact me at 561-425-7760.

Sincerely,

**BAXTER & WOODMAN, INC.**



Jeffrey G. Hiscock, P.E.  
Stormwater Department Manager

*Attachment: Bid Tabulation*  
B&W File No. 180551.00





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**FOSTER MARINE CONTRACTORS, INC.  
3180 FAIRLANE FARMS ROAD, SUITE 1  
WELLINGTON, FLORIDA 33414  
561-683-0034 PHONE | 561-683-0035 FAX**

**SEALED BID FOR:**

**LakeShoreDriveDrainageImprovements Bid No.:106-2020**

**Town of LakePark Town  
Clerk  
535 Park Avenue Lake Park,  
Florida33403**

**BID OPENING: October 2, 2020@ 1:00 p.m  
Addenda-1, 2, & 3  
(1) Original & (3) HardCoples**

# TOWN OF LAKE PARK SEACOAST UTILITY AUTHORITY

## CONSTRUCTION CONTRACT AND GENERAL CONDITIONS FOR

### LAKE SHORE DRIVE DRAINAGE IMPROVEMENTS LAKE SHORE DRIVE WATER MAIN AND SANITARY SEWER IMPROVEMENTS



BID SET  
AUGUST 2020

#### TOWN OF LAKE PARK CITY COMMISSIONERS

MAYOR - MICHAEL O'ROUKE  
VICE MAYOR - KIMBERLY GLAS-C ASTRO  
COMMISSIONER - ERIN FLAHERTY  
COMMISSIONER - JOHN LINDEN  
COMMISSIONER - ROGER MICHAUD  
TOWN MAN AGER - JOHN D'AG0 STINO

#### SEACOAST UTILITY AUTHORITY BOARD MEMBERS

CHAIR - JOHN D' AGOSTINO  
VICE CHAIR - ROBERT WEISMAN  
PRESIDENT PRO-TEMP - ANDREW LUKASIK  
MEMBER - RON FERRIS  
MEMBER - JOSEPH F. LO BELLO

**BAXTE R&W** OODMAN  
Consulting Engineers

## INVITATION TO BID

Sealed Bids, in quadruplicate, will be received by the Town of Lake Park in the Town Clerk's Office located at 535 Park Avenue, Lake Park, Florida 33403, for the subject Project until 10:00 A.M. Local Time, September 30, 2020, then opened publicly at that time and read. All bids shall be in sealed envelopes addressed to the Town Clerk, Town of Lake Park, Lake Park, Florida, 33403, and plainly marked on the outside:

**PROJECT BID NO:** 106-2020

**PROJECT NAME:** Lake Shore Drive Drainage Improvements

The OWNER for the Project is the Town of Lake Park.

The ENGINEER for the Project is Baxter Woodman, Inc.

The Work is generally described as follows: The engineered project will establish and improve the Level of Service of Lake Shore Drive by improving drainage and addressing sea level rise as a result of storm surges, king tides, and climate change. The project includes a new drainage infrastructure, a pump station, a dry detention/bio-swale area for water quality, and in-line check valves to prevent backflow from the Intracoastal Waterway/Lake Worth Lagoon (LWL). The major items of the project include new roadway drainage, reconstruction of the roadway with curb and gutter, and sidewalks. The project design includes four locations where storm water discharges to the LWL via EXISTING gravity pipes (to remain). Each pipe will include a storm water pollution baffle and an in-line check valve. A 22,500 gpm pump station will be constructed to handle higher sea level conditions. The station will pump water to a new dry detention/bio-swale area to be located in an adjacent park. The detention/bio-swale area will attenuate and treat the stormwater before discharging it to the LWL via a raised inlet with a 12-inch pipe and retaining walls to channel water over the existing seawall.

The project includes the reconstruction of Lake Shore Drive from 190 feet south of Date Palm Drive to 65 feet northwest of Castlewood Drive, a distance of 3,250 linear feet. Approximately 30 storm drainage inlets are included in the project which will be located in grassed swale areas. The new storm water carrying pipes include sizes up to 72 inches in diameter.

The project is partially funded with a federal grant. As such, bidders are advised that there will be additional documentation requirements and obligations required of the winning bidder. Bidders are encouraged to fully review the grant document which is included as an exhibit in the bid documents. In addition, the project includes water and sewer improvements, and the Town has partnered with Seacoast Utility Authority on these items. The water and sewer components of the project shall be bid as an alternate, and may be part of the scope at the discretion of Seacoast Utility Authority. Alternatively, Seacoast Utility Authority may complete their portion of the work separately.

Hard copies of the Bidding Documents may be purchased from the **Town of Lake Park** for the nonrefundable fee of \$100.00 per set. Bidding Documents will be provided on a compact disc or data drive.

INV-2

Bidders with technical questions concerning the Bidding Documents should contact the Town Clerk, by calling 561-881-3311 or emailing to [townclerk@lakeparkflorida.gov](mailto:townclerk@lakeparkflorida.gov).

Questions, and all responses will be provided to all bid holders. The last day that questions will be accepted is September 23, 2020.

A NON-MANDATORY pre-bid conference meeting will be held on September 9, 2020 at 10:00 a.m. Local Time at the Town of Lake Park Commission Chambers, 535 Park Avenue, Lake Park, Florida, 33403. Any and all meetings may be held virtually due to COVID19, and all required information needed to enable remote, virtual access will be provided on the Town's website at least five (5) business days prior to the event if held virtually. It shall be the responsibility of all bidders to check the Town's website for accessibility to any meeting that may be held virtually. It is strongly advised that all potential bidders attend the pre-bid conference meeting.

No Bids may be withdrawn for a period of ninety (90) days after the scheduled closing date for the receipt of bids. The cost of Bid preparation is considered an operational cost of Bidders and shall not be passed on or borne by the Owner.

A cashier's check or a Bid Bond in a sum not less than five percent (5%) of the amount of the bid, made payable to the Town of Lake Park, shall accompany each Bid as a guarantee that the bidder will not withdraw from the competition after the opening of Bids. The sureties for the Bid Bond and Public Construction Bond must be an entity included in the most recent United States Department of Treasury list of acceptable sureties and be authorized to issue surety bonds in Florida. Bid Security shall be in a single acceptable instrument. If Bid Security is made by cashier's check, the conditions contained in the Bid Bond shall nonetheless apply to the cashier's check as they relate to forfeiture or damages.

The Successful Bidder, who is awarded the contract, will be required to furnish a Public Construction Bond in full contract amount in accordance with Florida Statutes 255.05, as amended, and to submit a Certificate of Insurance demonstrating conformance with the Contract Documents. Failing to do so may result in the Owner retaining the Bid Security as agreed upon liquidated damages. Bids shall be prepared, addressed and submitted in compliance with detailed instructions as set forth in the Instructions to Bidders.

The Town of Lake Park reserves the right to reject any or all Bids in whole or in part, with or without cause, to waive irregularities, variances, deviations, technical errors and informalities to the extent permitted by law, or to accept the Bid which in its judgment best serves the public interest.

Town of Lake Park  
Vivian Mendez, Clerk  
PUB: Palm Beach  
Post August 23, 2020

**BID FORM**

BIDDER: Foster Marine Contractors, Inc.  
PROJECT LAKE SHORE DRIVE DRAINAGE IMPROVEMENTS; BID No. 1 06 2020  
DATE: October 2, 2020

THIS BID IS SUBMITTED TO: Town of Lake Park  
Town Clerk  
535 Park Avenue  
Lake Park, Florida, 33403

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid Security. This Bid will remain open for ninety (90) days after the day of Bid opening. BIDDER will sign and submit the Agreement with Bonds and other documents required by the Bidding Requirements within fifteen (15) days after the date of OWNER'S Notice of Award.

3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:
  - a. BIDDER has examined copies of the Invitation to Bid, Instructions to Bidders, all the Contract Documents and the following addenda (receipt of all which is hereby acknowledged):

<u>DATE</u>	<u>ADDENDUM NUMBER</u>
<u>1</u>	<u>9/18/2020</u>
<u>2</u>	<u>9/25/2020</u>
<u>3</u>	<u>9/28/2020</u>

- b. BIDDER has examined the Contract Documents, the site and locality where the Work is to be performed, the legal requirements (Federal, State and Local laws, ordinances, rules and regulations) and the conditions affecting cost, progress or performance of the Work and has made such independent investigations as BIDDER deems necessary.

- c. BIDDER has contacted local governments and agencies where the Work is to take place and determined all required permits, licenses and fees.

- d. BIDDER has obtained and reviewed all such examinations, investigations, explorations, tests and studies which pertain to the subsurface or physical conditions at the site or otherwise, and which may affect the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by BIDDER for such purposes.

e. BIDDER has reviewed and checked all information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data with respect of said Underground Facilities are or will be required by BIDDER in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3.1 of the General Conditions.

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

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

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

4. a. BIDDER agrees to perform all the Work described in the Contract Documents, subject to adjustments as provided therein, for the Unit Sum BIDDER provided on the Price Schedule attached hereto as Schedule A.

b. If the Work is to be performed on a "unit price" basis, BIDDER understands and agrees that the unit quantities shown on the Bid Form Unit Price Schedule are approximate only, not guarantees and are subject to either increase or decrease; that should the quantities of any of the items of Work be increased, BIDDER will perform the additional Work at the unit prices set out herein; that should the quantities be decreased, final payment shall be made on actual quantities completed at the unit prices; that it will make no claims for anticipated profits for any decrease in the quantities; that final quantities installed shall be determined by the ENGINEER upon completion of the Work; and that OWNER may elect to construct only a portion of the Work covered by the Contract Documents and in such event, BIDDER will perform that portion of the Work for which BIDDER is awarded a Contract at the unit prices quoted herein.

5. a. BIDDER agrees that the Work will be complete within 305 calendar days from the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment within 335 calendar days from the date when the Contract Time commences to run.

b. BIDDER accepts the provisions of the Agreement regarding liquidated

damages in the event of failure to complete the Work on time.

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

- a. Required Bid Security,
- b. Unit Price Schedule,
- c. Schedule of Subcontractors,
- d. Schedule of Suppliers, Equipment and Materials,
- e. Required forms, and
- f. Questionnaire Sheet.

7. The terms used in *this* Bid which are defined in the General Conditions included as part of the Contract Documents have the meanings ascribed to them in the General Conditions.

8. BIDDER's Florida Contractor's License Number is

CGC013244/ CGC1521085 See Licenses - Attachment "A"

9. BIDDER covenants that it is qualified to do business in the State of Florida.

10. The prices contained in the Bid Proposal shall include !!! costs necessary to provide the Work described in the Contract Documents, including, but not limited to, labor, materials, equipment, overhead, profit and insurance.

BIDDER understands that the OWNER reserves the right to reject any or all Bids in whole or in part, with or without cause, to waive any irregularities, variances, deviations, technical errors and informalities to the extent permitted by law or to accept the Bid which in its judgment best serves the public interest.

BIDDER agrees that this Bid shall be good and may not be withdrawn for a period of ninety (90) calendar days after the scheduled closing time for receiving Bids.

Upon receipt of Notice of Intent to Award, BIDDER will execute the formal contract attached and deliver it with a Public Construction Bond and a Certificate of Insurance evidencing conformance with the contract requirements as required by Article 5 of the General Conditions within fifteen (15) days. OWNER may draw upon the Bid Security to the full extent of its damages in the event the executed Contract, Public Construction Bond and Certificate of Insurance are not delivered within the time above set forth.

By submission of this Bid, each BIDDER certifies, and in the case of a joint Bid each party thereto certifies as to his own organization, that this Bid has been arrived at independently, without consultation, communication or agreement as to any matter relating to this Bid with any other BIDDER or with any competition.

Bids will be compared on the basis of the TOTAL AMOUNT OF BID and Bidder's qualifications. Where the extended price differs from the unit price times the quantity, the unit price times the quantity will be accepted as the amount bid. The OWNER reserves the right to omit or add to the construction of any portion or portions of the work heretofore enumerated or shown on the plans at any time during or before construction. Furthermore, the OWNER reserves the right to omit in its entirety any one or more items of the Contract without forfeiture of the remainder of the Contract and without suffering claims for loss of anticipated profits or any other claims by the Contractor at any time during or before construction, which claims are hereby waived.

Bidder is warned that the estimates of the quantities of the various items of work and materials as set forth in the proposal form are approximate only and are given solely to be used as a uniform basis for the comparison of bids. The quantities actually required to complete the contract and work may be less or more than so estimated, and, if so, no action for damages or for loss of profits shall accrue to the Contractor by reason thereof.

IF BIDDER is:

~~AN INDIVIDUAL~~

~~By (sign here): \_\_\_\_\_  
(Print Individual's Name): \_\_\_\_\_  
doing business as \_\_\_\_\_  
Business address: \_\_\_\_\_  
Phone No. \_\_\_\_\_~~

~~A PARTNERSHIP~~

~~\_\_\_\_\_  
(Partnership Name)  
By (sign here): \_\_\_\_\_  
(Print General Partner's Name): \_\_\_\_\_  
Business address: \_\_\_\_\_  
Phone No. \_\_\_\_\_~~

A CORPORATION

Foster Marine Contractors, Inc.  
(Corporation Name)  
Florida  
(State of Incorporation)

By (sign here): \_\_\_\_\_  
(Print Name of Person Authorized to Sign): R. Howard Wight

Its: President  
(Print Title of Person Signing if other than the president or vice president, attach evidence of individual's authority to sign)

Business address: 3180 Fairlane Farms Road, Suite 1, Wellington, Florida 33414  
Phone No. (561) 683-0034



~~A LIMITED LIABILITY COMPANY~~

\_\_\_\_\_  
(LLC Name)

By (Sign here): \_\_\_\_\_

(Print Name of Person Signing): \_\_\_\_\_

Its: \_\_\_\_\_  
(If other than manager, attach evidence of individual's authority to sign)

\_\_\_\_\_  
(Address)

Phone No. \_\_\_\_\_

A JOINT VENTURE

\_\_\_\_\_  
(Joint Venture Name)

By(signhere) \_\_\_\_\_

(Print Name of Person Signing): - - - - -

\_\_\_\_\_  
(Address)

Phone No. \_\_\_\_\_

By(signhere): - - - - -

{Print Name of Person Signing) - - - - -

\_\_\_\_\_  
(Address)

Phone No. \_\_\_\_\_

(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above as to that type of entity).

### LIST OF SUBCONTRACTORS

List each subcontractor to be used on the Project for the types of work to be performed as listed below. If the work is to be performed by the BIDDER, and no subcontractor is to be used, indicate same by writing "self performed" on the line next to name of firm.

1. Name of Firm R&D Paving, LLC  
Address 400 Executive Center Drive, Suite 210, West Palm Beach, FL 33401  
Work to be performed: Asphalt
2. Name of Firm Pathway Enterprises, Inc.  
Address 6797 Augusta Court, West Palm Beach, FL 33412  
Work to be performed: Concrete (Flatwork)
3. Name of Firm Dan Griffin Sod Company, Inc.  
Address 2738 Palm Deer Drive, Loxahatchee, FL 33470  
Work to be performed: Sodding
4. Name of Firm Fine Line Striping, Inc.  
Address 4915 Georgia Avenue, West Palm Beach, FL 33405  
Work to be performed: Striping and Signing
5. Name of Firm Paveway Systems, Inc.  
Address 114 Indian Lakes Lane, Florahome, FL 32140  
Worked to be performed Stamped Asphalt
6. Name of Firm Dennis J. Leavy & Associates, Inc.  
Address 460 Business Park Way, Suite B, Royal Palm Beach, FL 33411  
Work to be performed: Layout and As-Builts

Failure to complete the above form shall be sufficient cause for Bid rejection.

\* Continued on following page

**LIST OF SUBCONTRACTORS**

List each subcontractor to be used on the Project for the types of work to be performed as listed below. If the work is to be performed by the BIDDER, and no subcontractor is to be used, indicate same by writing "self performed" on the line next to name of firm.

- 1. Name of Firm Florida Exotic Landscape Company, Inc.  
Address 4016 SW Moore Street, Palm City, FL 34990  
Work to be Performed Landscaping and Irrigation
  
- 2. Name of Firm Daniels Fence Corp.  
Address 2885 SE Jefferson Street, Stuart, FL 34997  
Work to be Performed Fencing
  
- 3. Name of Firm C.R. Dunn, Inc.  
Address 1202 Pope Lane, Lake Worth, FL 33460  
Work to be Performed Electrical Work
  
- 4. Name of Firm Ranger Construction Industries, Inc.  
Address 101 Sansbury's Way, West Palm Beach, FL 33411  
Work to be Performed Asphalt
  
- 5. Name of Firm \_\_\_\_\_  
Address \_\_\_\_\_  
Work to be Performed \_\_\_\_\_
  
- 6. Name of Firm \_\_\_\_\_  
Address \_\_\_\_\_  
Work to be Performed \_\_\_\_\_

Failure to complete the above form shall be sufficient cause for Bid rejection.

## SCHEDULE OF SUPPLIERS, EQUIPMENT AND MATERIALS

List Suppliers and Manufacturers to be used on the Project

<u>DESCRIPTION</u>	<u>SUPPLIER</u>	<u>MANUFACTURER</u>	<u>MODEL</u>
Water/sewer/pipe/fittings	Core & Main	Various. per Town and Seacoast Standards	Various, per Plans and Specs
Water/sewer/pipe/fittings	Ferguson Waterworks	Various, per Town and Seacoast Standards	Various, per Plans and Specs
Reinforced Concrete Pipe (RCP)	Rinker Pipe	Various, per Town and Seacoast Standards	CLIII-RCP
Precast Concrete Structures	Concrete Products of the Palm Beaches, Inc.	Concrete Products of the Palm Beaches, Inc.	Various, per Plans and Specs
Asphalt	JW Cheatham	JWCheatham	Various, per Plans and Specs
Base Rock	DS Eakins	OS Eakins	Various, per Plans and Specs
Submersible Electric Axial Flow Pumps	MWI Pumps	MWIPumps	(1) MWI SEA312X16 (2) MWI SEA31BX20
Triplex Pump Control Panel	C.C. Control Corp.	C.C. Control Corp. Schaefels Enclosura Russell Stoll Bussman & Hoffman	Various, per Plans and Specs
Multisrnat Controller Package	C.C. Control Corp.	Flygt/Xylem	84-800084MSU 3MP-RZ Controller with Motor Protection

Failure to utilize suppliers, equipment and manufacturers listed in the Technical Specifications shall be cause for Bid rejection.

**DEBARRED FIRMS**

The undersigned hereby certifies that the firm of Foster Marine Contractors, Inc.  
X has not and will not award a subcontract, in connection with any contract awarded to it as  
the result of this bid, to any firm that has been debarred for non-compliance with the Federal Labor  
Standards, Title VI of the Civil Rights Act of 1964, Executive Order 11246 as amended or any  
other Federal Law.

Foster Marine Contractors, Inc.

Name of Firm Submitting Bid

R. Howard Wight  
Signature of Authorized Official

President

Title

10/2/2020

Date



**FLORIDA TRENCH SAFETY ACT ACKNOWLEDGEMENT**

If this Project involves trench excavations that will exceed a depth of 5 feet, pursuant to Florida Statutes Chapter 553, Part III Trench Safety Act will be in effect and the undersigned Bidder hereby certifies that such Act will be complied with during the construction of the Project.

Bidder acknowledges that included in the various items of the bid and in the total bid price are costs for complying with the Florida Trench Safety Act. Bidder further identifies the cost to be as summarized below:

	<u>Trench Safety Measure (Description)</u>	<u>Units of Measure (LF, SY)</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Extended Cost</u>
A.	<u>Trench Slope 12" - 18u RCP</u>	LF	1,186'	\$2.00	\$2,372.00
B.	<u>Trench Shield 24" - 72"</u>	LF	3,064'	\$5.00	\$15,320.00
C.	<u>Temporary Sheeting (PS)</u>	SF	3,500'	\$10.00	\$35,000.00
D.	<u>Trench Slope 4" - 8" Water Main</u>	LF	3,970'	\$2.00	\$7,940.00
E.	<u>Trench Shield 8" Sanitary Sewer</u>	LF	525'	\$5.00	\$2,625.00
F.				Total:	\$63,257.00

## GENERAL CONDITIONS

### ARTICLE 1

#### DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

**Addenda**-Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding documents or the Contract Documents.

**Agreement or Contract**-The written agreement between OWNER and CONTRACTOR covering the Work to be performed; including other contract Documents that are attached to the Agreement and made a part thereof as provided therein.

**Application for Payment**-The form which is to be used by CONTRACTOR is requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

**Bid**-The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

**Bidder**-Any person, firm or corporation submitting a Bid for the Work.

**Bonds**-Bid performance and payment bonds and other instruments of security.

**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 Time, issued on or after the Effective Date of the Agreement.

**Contract Documents**-The Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including the Invitation to Bid, the documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Bonds, these General Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all amendments, modifications and supplements issued pursuant to paragraphs 3.4 and 3.5 on or after the Effective Date of the Agreement.

**Contract Price**-The monies payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).

**Contract Time**-The number of days (computed as provided in paragraph 16.2) or the date stated in the Agreement for the completion of the Work.

**CONTRACTOR**-The person, firm or corporation with whom OWNER has entered into the Agreement.

**Defective**-An adjective which when modifying the work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or 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 14.8 or 14.10).

**Drawings**-The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents.

**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.

**ENGINEER**-The person, firm or corporation named as such in the Agreement.

**Field Order**-A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5, but which does not involve a change in the Contract Price or the Contract Time.

**Laws and Regulations**-Laws, rules, regulations, ordinances, codes and/or orders.

**Lien**-Any charge, security interest, lien or encumbrance in any way arising, whether by law, contract or otherwise.

**Notice of Award**-The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein within the time specified, OWNER will sign and deliver the Agreement. If requested by the OWNER, both the Notice of Award and Notice to Proceed will be issued by the ENGINEER.

**Notice to Proceed**-A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR's obligations under the Contract Documents.

**OWNER**-The public body or authority, corporation, association, firm or person with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.

**Partial Utilization**-Placing a portion of the Work in service for the purpose for which it is intended (for a related purpose) before reaching Substantial Completion for all the Work.

**Project**- The total construction of which the Work to be provided under the Contract documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

**Resident Project Representative**-The authorized representative of ENGINEER who is assigned to the site or any part thereof.

**Shop Drawings**-All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

**Specifications**-Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

**Subcontractor**-An individual, firm or corporation having direct contract with CONTRACTOR or with any other subcontractor for the performance of a part of the Work at the site.

**Substantial Completion**-When the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER as evidenced by ENGINEER's definitive Certificate of Substantial Completion, the work sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

Notwithstanding the foregoing, Substantial Completion requires successful completion of all testing, submission of satisfactory bacteriological test reports, and submission of complete Record Drawing information to the ENGINEER.

**Supplementary Conditions**-The part of the Contract Documents which amends or supplements these General Conditions.

**Supplier**-A manufacturer, fabricator, supplier, distributor, materialman or vendor.

**Underground Facilities**-All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasement containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

**Unit Price Work**-Work to be paid for on the basis of unit prices.

**Work**-The entire [process of completing the construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

**Work Directive Change**-A written directive 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 physical conditions under which the Work is to be performed as provided in paragraphs 4.2 or 4.3 or to emergencies under paragraph 6.22. A Work Directive Change may not change the Contract Price or the Contract time, but is evidence that the parties expect that the change directed or documented by a Work directive Change 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 Time as provided in paragraph 10.2.

**Written Amendment**-A written amendment of the Contract documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly Work-related aspects of the Contract Documents.

## ARTICLE 2

### PRELIMINARY MATTERS

#### **Non-Collusion; Ethics and Conflicts of Interests; Delivery of Bonds and Certificate of Insurance:**

2.1. The CONTRACTOR states that the response provided in all respects is fair and without collusion or fraud. The CONTRACTOR acknowledges that there is not any connection or common interest in the profits with any other persons making any request or proposal for the Work or services to be provided for this Work. No head of any department, any employee or any officer of the Town of Lake Park is directly or indirectly interested therein. If any relatives are employed by the Town, the name and relationship have been previously provided to the Town.

2.1.2. The CONTRACTOR has received and agrees to comply with the Town of Lake Park Code of Ethics which policy. The Town Council will strictly apply the provision regarding conflicts of interest.

2.1.3. CONTRACTOR shall also deliver to OWNER such Bonds and Certificates of Insurance as CONTRACTOR may be required to furnish in accordance with Article 5 at the time CONTRACTOR delivers the executed Agreement to OWNER. All insurance obtained by CONTRACTOR as required by the Contract Documents shall name OWNER as an additional insured and that CONTRACTOR shall furnish a certificate of said insurance to OWNER evidencing the same. The CONTRACTOR shall furnish a Public Construction Bond to the OWNER in an amount not less than one hundred percent (100%) of the Contract Price. The bond furnished by the CONTRACTOR shall incorporate by reference the terms of this Agreement as fully as though they were set forth verbatim in such bonds.

In the event the Price is adjusted by Change Order executed by the CONTRACTOR CONTRACTOR, the penal sum of the bond shall be deemed increased by like amount. The bond furnished by the CONTRACTOR shall be in form required by the OWNER and in conformity with Section 255.05, Florida Statutes, shall be recorded in the Public Records of Palm Beach County before construction commences, and shall be executed by a surety, or sureties, reasonably suitable to the OWNER.

**Copies of Documents:**

2.2. All copies of documents necessary for the execution of the Work will be furnished by OWNER to CONTRACTOR at the cost of reproduction. CONTRACTOR shall bear the costs of all documents requested from OWNER.

**Commencement of Contract Time; Notice to Proceed:**

2.3. The Contract Time will commence to run on the thirtieth day after a Notice to proceed is given, on the day indicated in the Notice to Proceed.

**Starting the Project:**

2.4. CONTRACTOR shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

**Before Starting Construction:**

2.5. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby.

2.5.1. CONTRACTOR shall perform no portion of the Work at any time without Contract Documents or, where required, approved shop drawings or Product Data for such portion of the Work.

2.5.2. By executing the Contract, CONTRACTOR acknowledges he has examined the Contract Documents, the site and locality where the Work is to be performed, the legal requirements (Federal, State and Local laws, ordinances, rules and regulations) and the conditions affecting cost, progress or performance of the Work and has made such independent investigations as CONTRACTOR deems necessary, and that the Contract Documents fully and completely describe the Work and are sufficient and complete to accomplish the stated objective of the Work so that the Work accomplishes its stated objectives within the stated time and cost parameters.

2.6. Within ten (10) days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for review:

2.6.1. An estimated progress schedule indicating the starting and completion dates of the various stages of the Work;

2.6.2. A preliminary schedule of Shop Drawing submissions; and

2.6.3. A preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to

serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by CONTRACTOR at the time of submission.

**Preconstruction Conference:**

2.7. Within twenty (20) days after the Effective Date of the Agreement, but before CONTRACTOR starts the Work at the site, a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to discuss the schedules referred to in paragraph 2.6, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

**Finalizing Schedules:**

2.8. At least ten (10) days before submission of the first Application for Payment, a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to finalize the schedules submitted in accordance with paragraph 2.6.

The finalized progress schedule shall be acceptable to ENGINEER as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on ENGINEER responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility therefor. The finalized schedule of Shop Drawing submissions will be acceptable to ENGINEER as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to ENGINEER as to form and substance.

**Hurricane and Tropical Storm Precautions:**

2.9. During such periods of time as are designated by the United States Weather Bureau as being a tropical storm warning or hurricane warning or alert issued for Palm Beach County, the Town of Lake Park, the CONTRACTOR shall take all precautions necessary to secure the Work or project site, regardless of whether the OWNER has given notice of same.

2.10. Compliance with any governmental agency hurricane warning or alert precautions at the project site may be allowed as a cost of the work and may cause an increase in the Contract Price in accordance with this Agreement.

**ARTICLE 3**

**CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

**Intent:**

3.1. The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the State of Florida, without reference to conflict of laws principles.

3.2. 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 Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of

any governmental authority, whether such reference is by specifics or by implications, shall mean the latest 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. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or Documents, nor shall it be effective to assign to ENGINEER, or any of ENGINEER's consultants, agents or employees, any duty or authority to undertake responsibility contrary to the provisions of paragraphs 9.15 or 9.16. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 9.4.

3.3. If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to ENGINEER and OWNER in writing at once. Before proceeding with the Work affected thereby, CONTRACTOR shall obtain a written interpretation or clarification from ENGINEER.

3.3.1. Failure to report a conflict, error or discrepancy of which CONTRACTOR knew or should have known shall be deemed evidence that the CONTRACTOR has elected to proceed in the more expensive manner, at CONTRACTOR's expense, to accomplish the Work.

If the drawings disagree in themselves, figures shall govern over scaled measurements, large scale drawings shall govern over small scale drawings, the greater quantity of work or materials shall be furnished or performed; descriptive writings shall govern over legends indicating material or conditions and the Agreement takes precedence over all other contract documents.

#### **Amending and Supplementing Contract Documents:**

3.4. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 3.4.1. A formal Written Amendment,
- 3.4.2. A written and properly executed Change Order (pursuant to paragraph 10.4), or
- 3.4.3. A written and properly executed Work Directive Change (pursuant to paragraph 10.1).

As indicated in paragraphs 11.2 and 12.1, Contract Price and Contract Time may only be changed by a written and properly executed Change Order or a Written Amendment.

3.5. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- 3.5.1. A written Field Order (pursuant to paragraph 9.5).
- 3.5.2. ENGINEER's written approval of a Shop Drawing or sample (pursuant to paragraphs 6.26 and 6.27), or
- 3.5.3. ENGINEER's written interpretation or clarification (pursuant to paragraph 9.4).

#### **Reuse of Documents:**

3.6. Neither CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER shall 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; and they shall not reuse any of them on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER.

#### ARTICLE 4

##### AVAILABILITY OF LANDS; PHYSICAL CONDITIONS: REFERENCE POINTS

###### Availability of Lands:

4.1. OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR believes that any delay in OWNER's furnishing these lands, rights-of-way or easements entitles CONTRACTOR to an extension of the Contract Time, CONTRACTOR shall make a claim therefor as provided in Article 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

###### Physical Conditions:

4.2.1. Explorations and Reports: Reference is made to those reports of explorations and tests of subsurface conditions at the site that have been utilized by ENGINEER in preparation of the Contract Documents.

CONTRACTOR may rely upon the accuracy of the technical data contained in such reports, but not upon nontechnical data, interpretations or opinions contained therein or upon the completeness thereof for CONTRACTOR's purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to subsurface conditions at the site. Core boring data, including groundwater elevations or conditions if shown on the Drawings or attached to the Specifications, are presented only as information that is available indicating certain conditions found and limited to the exact locations and dates shown. Water levels shown by the aforesaid core boring data will not necessarily be maintained at the indicated levels during the construction time.

4.2.2. Existing Structures: Reference is made to those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 4.3) which are at or contiguous to the site that have been utilized by ENGINEER in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings, but not for the completeness thereof for CONTRACTOR's purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to physical conditions in or relating to such structures. Drawings provided by OWNER are not guaranteed as record or as-built information, and only represent the best available information on existing facilities.

4.2.3. Report of Differing Conditions: If CONTRACTOR believes that:

4.2.3.1. Any technical data on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is inaccurate, or

4.2.3.2. Any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the Contract Documents.

CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.11), notify OWNER and ENGINEER in writing about the inaccuracy or difference.

4.2.4 ENGINEER's Review: ENGINEER will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

4.2.5. Possible Document Change: If ENGINEER concludes that there is a material error in the Contract Documents or that because of newly discovered conditions a change in the Contract Documents is required, a Work Directive Change or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.

4.2.6. Possible Price and Time Adjustments: In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference. If OWNER and CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefor as provided in Articles 11 and 12.

**Physical Conditions-Underground Facilities:**

4.3.1. 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 or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.3.1.1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

4.3.1.2. CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

4.3.2. Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 6.22), identify the owner of such Underground Facility and give written notice thereof to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR may be allowed an adjustment in the Contract Price for an existence of any Underground Facility that was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of. If the parties are unable to agree as to the amount or length thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

**Reference Points:**

4.4. 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 approval of the OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point 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 by professionally qualified personnel.

## ARTICLE 5

### BONDS AND INSURANCE

#### Performance and Other Bonds:

5.1. CONTRACTOR shall file with OWNER a Public Construction Bond in the full amount of the Contract price in accordance with the requirements of Florida Statutes Section 255.05, as amended, as security for the faithful performance of the Contract the payment of all persons supplying labor and materials for the construction of the work, and to cover all guarantees against defective workmanship or materials, or both, during the warranty period following the date of final acceptance of the work by OWNER. The Surety furnishing this bond shall have a sound financial standing and a record of service satisfactory to OWNER, and shall be authorized to do business in the State of Florida. The Surety furnishing this bond must also be an entity included in the most recent United States Department of Treasury list of acceptable sureties.

5.2. If the Surety on any Bond furnished by CONTRACTOR is declared a 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 5.1, CONTRACTOR shall, within five (5) days thereafter, substitute another Bond and Surety, both of which must be acceptable to OWNER.

#### Contractor's Insurance:

5.3. CONTRACTOR shall purchase and maintain such commercial general liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether the performance is to be performed or furnished by CONTRACTOR, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable, as follows:

5.3.1. Claims under workers' compensation, disability benefits and other similar employee benefits acts, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;

5.3.2. Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees, or persons or entities excluded by statute from the requirements of paragraph 5.3.1 but required by the Contract Documents to provide the insurance required by that paragraph;

5.3.3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

5.3.4. Claims for damages insured by 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;

5.3.5. 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;

5.3.6. Claims arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property;

5.3.7. 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;

5.3.8. Claims for violations of intellectual property Laws and Regulations, including without limitation, patent, copyright, trademark, and trade secret Laws and Regulations;

5.3.9. Claims for violations of the fair employment and sexual harassment Laws and Regulations; and

The insurance required by this paragraph 5.3 shall include the specific coverages and be written for not less than the limits of liability and coverages provided in these General Conditions, or required by law, whichever is greater. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written notice has been given to OWNER and ENGINEER by certified mail, and also must include the OWNER as an Additional Insured. All such insurance shall remain in effect until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with paragraph 13.12.

5.4 The limits of liability for the insurance required of CONTRACTOR shall provide coverage for not less than the following amounts:

**Workers' Compensation:**

1. Florida Statutory Requirements
2. Applicable Federal Statutory Requirements

**Commercial General Liability:**

Bodily Injury/Property Damage	
Each Occurrence	\$1,000,000
Aggregate	\$2,000,000

**Commercial Automobile Liability:**

(Owned-leased-non-owned & hired)

Bodily Injury/Property Damage	
Each Occurrence (Combined Single Limit)	\$ 500,000

**Excess Liability:**

Umbrella Form: \$2,000,000

The following names shall be added as additional insured on CONTRACTOR'S commercial general liability, commercial automobile liability and excess liability policies:

**OWNER**

Town of Lake Park  
535 Park Avenue  
Lake Park, Florida, 33403

**ENGINEER**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

“Coverages provided by the Contractor or Vendor must be underwritten by an insurance company deemed acceptable by the Town. During the term of the Contract, insurance coverage shall be provided by companies qualified to do business in Florida and rated A- or better by A.M. Best. Should any of Contractor's or Vendor's insurance carriers fail to maintain these required standards during the term of the Contract, Contractor or Vendor shall immediately replace such insurance with insurance issued by a carrier that meets these standards. Failure to do so will be grounds for immediate termination of this Contract by Town. The Town reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.”

5.5. The CONTRACTOR also agrees to maintain contractor’s pollution liability at a limit of liability not less than \$1,000,000 each claim and \$2,000,000 for all claims. If this insurance is provided on an annual practice insurance policy, the CONTRACTOR agrees to maintain the policy for a period not less than three (3) years after the issuance of the final release and certificate of final completion issued by the OWNER for the project. The original retroactive date on an annual practice policy must equal or proceed the effective date of the Contract, or the performance of the Work hereunder and remain unchanged for the same three (3) year period stated for this type of policy. If this insurance is provided on a per-project basis insurance policy, the CONTRACTOR agrees to maintain an extended reporting period not less than three (3) years commencing the issuance of the final release and certificate of final completion issued by the OWNER for the project. The original retroactive date on a per-project basis policy must equal or proceed the effective date of the Contract, or the performance of Work hereunder and remained unchanged for the same three (3) year period stated for this type of policy.

5.5. CONTRACTOR shall deliver a certificate of insurance evidencing such coverage with OWNER. The additional liability coverage for ENGINEER is not to be construed as requiring, in any way, that either OWNER or CONTRACTOR be obligated to supply insurance protecting ENGINEER for its liability emanating from professional errors or omissions. All insurance shall contain a provision that coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days prior written notice has been given to OWNER and ENGINEER.

**Commercial Liability Insurance:**

5.6 The commercial general liability insurance required by paragraph 5.3 will include contractual liability insurance applicable to CONTRACTOR's obligations under paragraphs 6.30 and 6.31.

**Acceptance of Insurance:**

5.6.1. If OWNER has any objection to the coverage afforded by or other provisions of the insurance being purchased and maintained by CONTRACTOR subsequent to issuance of the Notice to Proceed on the basis of its not complying with the Contract Documents,

Owner shall notify CONTRACTOR in writing thereof within thirty (30) days of date from receipt of notice of changed or dropped coverage by OWNER. CONTRACTOR shall provide to OWNER such additional information in respect of insurance provided as OWNER may reasonably request. In the event of changed conditions, OWNER may require CONTRACTOR to supplement or require such additional insurance as OWNER may reasonably request.

5.6.2 In case of breach by CONTRACTOR of any insurance provision stated in the Contract Documents, OWNER, at its option, may take out and maintain, at the expense of CONTRACTOR, such insurance as OWNER may deem proper and OWNER may deduct the cost of such insurance from any monies which may be due or become due CONTRACTOR under this Agreement, or at the option of OWNER, such cost of insurance shall be an independent obligation of CONTRACTOR to OWNER.

**Partial Utilization-Property Insurance:**

5.7. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy.

**Builder's Risk:**

5.8. Contractor shall not be required to insure against claims for damage to property comprising the Work in progress or materials which are intended to become an integral part of the Project, including loss of use ("Builder's Risk Insurance"). However, if Contractor elects to forego purchase of Builder's Risk Insurance in an amount that is at least equal to the Contract Price, then Contractor shall be deemed to have self insured for losses which would otherwise have been covered by Builder's Risk Insurance, Contractor shall be required to replace, repair or reconstruct any damaged Work or materials at Contractor's sole expense, and Owner shall not be required to reimburse Contractor for any amounts so expended by Contractor.

**ARTICLE 6**

**CONTRACTOR'S RESPONSIBILITIES**

**Supervision and Superintendence:**

6.1 CONTRACTOR shall supervise 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 be responsible to see that the finished Work complies accurately with the Contract Documents. Notwithstanding anything to the contrary herein, CONTRACTOR shall be responsible for the omissions or commissions of its subcontractors, vendors, materialmen, etc., and such entities shall not be considered "third parties."

6.1.1. The Contract Documents are intended to communicate the nature of the design, concept and scope of the Work. CONTRACTOR shall be responsible for the construction and coordination of the parts, and all systems shall be complete compatible and fully functional without additional cost or delay from the parameters set forth in the Contract Documents.

6.2 During the progress of the Work, CONTRACTOR shall continuously employ a competent resident superintendent, who shall not be replaced without prior written notice to OWNER and ENGINEER, except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications transmitted to the superintendent shall be as binding as if given to CONTRACTOR.

**Labor, Materials and Equipment:**

6.3. CONTRACTOR shall provide competent, suitable 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. Except in connection with the safety and protection of persons, the Work, or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent given after prior written notice to ENGINEER.

6.4. CONTRACTOR shall furnish and assume full responsibility for all 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 furnishing, performance, testing, start-up and completion of the Work.

6.5. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier and materialmen, except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to ENGINEER, or any of ENGINEER's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 and 9.16.

**Adjusting Progress Schedule:**

6.6. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.9) adjustments in the progress schedule to reflect the impact thereon of new developments); these will conform generally to the progress schedule then in effect.

**Substitutes or "Equivalent or Equal" Items:**

6.7.1. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by ENGINEER if sufficient information is submitted by CONTRACTOR to allow ENGINEER to determine that the material or equipment proposed is equivalent or equal to that named in the Contract Documents. Requests for review of substitute items of material and equipment will not be accepted by ENGINEER from anyone other than

CONTRACTOR, and all costs associated with such review shall be the sole obligation of CONTRACTOR. If CONTRACTOR or any of its sub-contractors, materialmen, laborers or suppliers wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to ENGINEER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equivalent or equal performance to that specified and be suited to the same use as the specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use 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 work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by ENGINEER in evaluating the proposed substitute. ENGINEER may require CONTRACTOR to furnish, at CONTRACTOR's expense, additional data about the proposed substitute.

6.7.2. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method sequence, technique or procedure of construction so long as it is acceptable to ENGINEER, if CONTRACTOR submits sufficient information to allow ENGINEER to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in paragraph 6.7.1 as applied by ENGINEER and as may be supplemented in the General Requirements.

6.7.3. ENGINEER will be allowed a reasonable time within which to evaluate each proposed substitute. ENGINEER will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without ENGINEER's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish, at CONTRACTOR's expense, a special performance guarantee or other surety with respect to any substitute. ENGINEER will record time required by ENGINEER and ENGINEER's consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Contract Documents occasioned thereby. Whether or not ENGINEER accepts a proposed substitute, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's consultants for evaluating each proposed substitute.

#### **Concerning Subcontractors, Suppliers and Others:**

6.8.1. CONTRACTOR shall not employ any Subcontractor, Suppliers or other person or organization (including those acceptable to OWNER and ENGINEER as indicated in paragraph 6.8.2), whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection at any time. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

6.8.2. If the OWNER requires the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to OWNER in advance of the specified date of the Agreement for acceptance by OWNER, and if CONTRACTOR has submitted a list thereof, OWNER's or ENGINEER'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 person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be increased by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

6.9. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any monies due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations. No party shall acquire third party beneficiary rights in the Work or the Contract Documents unless expressly approved by OWNER. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the OWNER, CONTRACTOR, or any other party pertaining to any matter resulting from the contract.

6.10. 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.

6.11. All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER and contains waiver provisions as required by paragraph 5.11. CONTRACTOR shall pay each Subcontractor a just share of any insurance monies received by CONTRACTOR on account of losses under policies issued pursuant to Article 5.

**Patent Fees and Royalties:**

6.12. 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. CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees and court and arbitration costs) arising out of 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, and shall defend all such claims in connection with any alleged infringement of such rights.

6.12.1. CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**Permits:**

6.13. CONTRACTOR shall obtain and pay for all construction permits and licenses and shall pay the costs for the provision of all utility services required for the Work. 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.

**Laws and Regulations:**

6.14.1. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The CONTRACTOR will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives. The CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR's actions pertaining to this contract. 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.

6.14.2. If CONTRACTOR observes that the Specifications or Drawings are at variance with any Laws or Regulations, CONTRACTOR shall give ENGINEER prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 3.4. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Laws or Regulations and without such notice to ENGINEER, CONTRACTOR shall bear all costs arising therefrom, however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with such Laws and Regulations.

During the performance of this contract, the CONTRACTOR agrees as follows:

6.14.3. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

6.14.4. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

6.14.5. The CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

6.14.6. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR 's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

6.14.7. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6.14.8. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6.14.9. In the event of the CONTRACTOR 's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

6.14.10. The CONTRACTOR will include the portion of the sentence immediately preceding paragraph 6.14.3 and the provisions of paragraphs 6.14.3 through 6.14.9 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The OWNER further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the OWNER so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The OWNER agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The OWNER further agrees that it will refrain from entering into any contract or contract

modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the OWNER agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

6.14.11. Compliance with the Contract Work Hours and Safety Standards Act.

a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth above CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth above, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth above.

c. Withholding for unpaid wages and liquidated damages. The OWNER shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

d. Subcontracts. The CONTRACTOR and its subcontractors shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

6.14.12. Clean Air Act. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The CONTRACTOR agrees to report each violation to the OWNER and understands and agrees that the OWNER will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

6.14.13. Federal Water Pollution Control Act. The CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The CONTRACTOR agrees to report each violation to the OWNER and understands and agrees that the OWNER will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

6.14.14. Suspension and Debarment. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by OWNER. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to OWNER, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6.14.15. In the performance of this Agreement, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— 1. Competitively within a timeframe providing for compliance with the contract performance schedule; 2. Meeting contract performance requirements; or 3. At a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The CONTRACTOR also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

6.14.16. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

6.14.17. Pursuant to Section 287.135, Florida Statutes, the CONTRACTOR, by execution of the Agreement, certifies that it: (i) is not on the Scrutinized Companies that Boycott Israel List (Fla. Stat. § 215.4725) and is not engaged in a boycott of Israel; (ii) is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (Fla. Stat. § 215.473); and (iii) is not engaged in business operation in Cuba or Syria.

6.14.18. Pursuant to Section 287.135, Florida Statutes, the OWNER may terminate the Agreement at the option of the OWNER if the CONTRACTOR: (i) is found to have submitted a false certification as provided under Section 287.135(5); (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel; (iii) has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or (iv) has been engaged in business operations in Cuba or Syria.

6.14.19. By execution of the Agreement, the CONTRACTOR represents, and the OWNER hereby materially relies on such representation in entering into this Agreement, that the CONTRACTOR has not been placed on the discriminatory vendor list, as provided in Section 287.134, Florida Statutes, as it may be amended from time to time. An untrue representation of the foregoing shall entitle the OWNER to terminate this Agreement, and may result in debarment from the CONTRACTOR's competitive procurement activities.

6.14.20. In accordance with the Public Entity Crimes Action (section 287.133, Florida Statutes), a person or affiliate who is a contractor, consultant or other provided, who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not be awarded or perform Work as a contractor, supplier, subcontractor, or consultant under a contract with the OWNER, and may not transact any business with the OWNER in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by the CONTRACTOR shall result in termination of this Contract, and may result in debarment from the OWNER's procurement activities.

6.14.21. The CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

6.14.22. It is a requirement of the OWNER that it enter into contracts only with firms that certify the establishment of a drug free work place in accordance with the Town's policy. Execution of this Contract by the CONTRACTOR shall also serve as the CONTRACTOR's required certification that it either has or that it will establish a drug free work place in accordance with the Town's policy and other applicable state and federal laws including, but not limited to, Sections 5151- 5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 USC 701 et seq.), 7 CFR Part 3017, Subpart F, Section 3017-600, Purpose.

6.14.23. The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

6.14.24. CONTRACTOR shall make a good faith effort to assure that small minority-owned and woman-owned business enterprises are used as sources of supplies, equipment, construction, and services as much as possible. Should subcontracts be let, CONTRACTOR shall take all the following affirmative action steps: (1) place qualified small and minority business and women's business enterprises on solicitation lists, (2) assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources, (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, (4) establish delivery schedules, where the requirements permit, which encourage participation by small and minority businesses, and women's business enterprises, and (5) use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

**Taxes:**

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

**Use of Premises:**

6.16. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises 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 therefor of any land or areas contiguous thereto and surrounding the Project, resulting from the performance of the Work. Should any claim be made against OWNER or ENGINEER by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or to otherwise resolve the claim by arbitration or at law.

CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER and ENGINEER harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against OWNER or ENGINEER to the extent based on a claim arising out of CONTRACTOR's performance of the Work.

6.17. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises, as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.18. 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 or surround properties to stresses or pressures that will endanger it.

**Record Documents:**

6.19. CONTRACTOR shall maintain in a safe place at the site one record copy of all Contract Documents, including without limitation, Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all 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 and examination and shall be delivered to ENGINEER for OWNER upon Substantial Completion of the Work.

**Safety and Protection:**

6.20. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- i. All employees on the Work and other persons and organizations who may be affected thereby;
- ii. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
- iii. 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.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify all governmental entities, owners of adjacent property, owners of Underground Facilities, and 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.

All damage, injury or loss to any property referred to in this paragraph 6.20 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish 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 either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR).

CONTRACTOR's duties and responsibilities for the safety and 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 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.21. CONTRACTOR shall designate a representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR's superintendent unless otherwise designated in writing by CONTRACTOR to OWNER.

**Emergencies:**

6.22. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from ENGINEER or OWNER, 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. If ENGINEER determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variations.

**Shop Drawings and Samples:**

6.23. After checking and verifying all field measurements, CONTRACTOR shall submit to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.9), or for other appropriate action if so indicated in the Supplementary conditions, five sets of copies (unless otherwise specified in the General Requirements) of all Shop Drawings, each set of copies which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as ENGINEER may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable ENGINEER to review the information as required.

6.24. CONTRACTOR shall also submit to ENGINEER for review and approval with such promptness as to cause no delay in Work all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended. Before submission of each Shop Drawing or sample, CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents. At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to ENGINEER for review and approval of each variation.

6.25. ENGINEER will review and approve with reasonable promptness Shop Drawings and samples, but ENGINEER's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required 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. 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.

The words "reasonable promptness" as used in this paragraph 6.26. shall mean that the Shop Drawings and/or samples will be placed in the mail for return to Contractor within fourteen (14) days after their arrival in the ENGINEER's office.

6.26. ENGINEER's review and approval of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by paragraph 6.24 and ENGINEER has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.24 and 6.25.

6.27. Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to ENGINEER's review and approval of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

**Continuing the Work:**

6.28. 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 15.5 or as CONTRACTOR and OWNER may otherwise agree in writing.

**Indemnification:**

6.29. CONTRACTOR hereby agrees to indemnify and hold harmless OWNER, its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of the Work.

6.30. In any and all claims against OWNER or ENGINEER or any of their consultants, agents or employees by any employee of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.29 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 or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

6.31. The obligations of CONTRACTOR under paragraph 6.29 shall not extend to the liability of ENGINEER, ENGINEER's consultants, agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, design or specifications.

**ARTICLE 7**

**OTHER WORK**

**Related Work at Site:**

7.1. OWNER may perform other work related to the Project at the site by OWNER's own forces, have other work performed by utility owners or let other direct contracts therefor which may contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other work; and, if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

7.2. CONTRACTOR shall afford each utility owner and other contractor who is a party to such direct contract (or OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of

such work, and shall properly connect and coordinate the Work with the work being performed by the party performing such additional work. CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work without notice and consent and will only cut or alter their work with the written consent of ENGINEER and 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.

7.3. If any part of CONTRACTOR's Work depends for proper execution or results upon the work of any other contractor or utility owner (or OWNER), CONTRACTOR shall inspect and promptly report to ENGINEER in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. CONTRACTOR's failure to so report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent or non-apparent defects and deficiencies in the other work.

**Coordination:**

7.4. If OWNER contracts with others for the performance of other work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified, and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be provided, to CONTRACTOR. Unless otherwise provided in these General Conditions, neither OWNER nor ENGINEER shall have any authority or responsibility in respect of such coordination.

**ARTICLE 8**

**OWNER'S RESPONSIBILITIES**

8.1. OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.2. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.3. OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly after they are due as provided in paragraphs 14.4 and 14.13.

8.4. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1. and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by ENGINEER in preparing the Drawings and Specifications.

8.5. In connection with OWNER's right to a stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

**ARTICLE 9**

**ENGINEER'S STATUS DURING CONSTRUCTION**

**Owner's Representative:**

9.1. Unless otherwise indicated, 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 and shall not be extended without written consent of OWNER and ENGINEER.

**Visits to Site:**

9.2. ENGINEER will make visits to the site at appropriate intervals to observe and inspect the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections 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 to the Contract Documents, are solely for the benefit of OWNER, and CONTRACTOR does not acquire any rights, whether third party beneficiary or direct, in the inspections. On the basis of such visits and on-site observations as an experienced and qualified design professional, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defects and deficiencies in the Work.

**Project Representation:**

9.3. Upon OWNER's direction in writing, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in observing the performance of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistant will be as provided in a separate written document. If OWNER designates another agent to represent OWNER at the site who is not ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in a separate written document.

**Clarifications and Interpretations:**

9.4. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 or Article 12.

**Authorized Variations in Work:**

9.5. 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 Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER, and also on CONTRACTOR who shall promptly perform the Work involved. If CONTRACTOR believes that a Field Order justifies an increase in the contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 or 12.

**Rejecting Defective Work:**

9.6. ENGINEER will have authority to disapprove or reject work which ENGINEER believes to be defective, and will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

**Shop Drawings, Change Orders and Payments:**

9.7. In connection with ENGINEER's responsibility for Shop Drawings and samples, see paragraphs 6.23 through 6.27, inclusive.

9.8. In connection with ENGINEER's responsibilities as to Change Orders, see Articles 10, 11 and 12.

9.9. In connection with ENGINEER's responsibilities in respect of Applications for Payment, etc., see Article 14.

**Determinations for Unit Prices:**

9.10. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR 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 decisions thereon will be final and binding upon OWNER and CONTRACTOR, unless, within ten (10) days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other party to the Agreement and to ENGINEER written notice of intention to appeal from such a decision.

**Decisions on Disputes:**

9.11. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of 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 Time will be referred initially to ENGINEER in writing, with a request for a formal decision in accordance with this paragraph, which ENGINEER will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to ENGINEER and other party to the Agreement promptly (but in no event later than thirty (30) days after the occurrence of the event giving rise thereto), and written supporting data will be submitted to ENGINEER and the other party within sixty (60) days after such occurrence unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim.

9.12. When functioning as interpreter and judge under paragraph 9.10 and 9.11, 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. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 and 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.17) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

**Limitations on ENGINEER's Responsibilities:**

9.13. Neither ENGINEER's authority to act under this Article 9 or elsewhere in the contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

9.14. ENGINEER will not be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and ENGINEER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

9.15. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

9.16. Claims, disputes, or other matters in controversy arising out of or related to the Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceeding. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Work is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

## **ARTICLE 10 CHANGES IN THE WORK**

10.1. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a Written Amendment, a Change Order, or a Work Directive Change. 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).

10.2. If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made therefor as provided in Article 11 or Article 12.

10.3. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.4 and 3.5, except in the case of an emergency as provided in paragraph 6.22 and except in the case of uncovering Work as provided in paragraph 13.9.

10.4. OWNER and CONTRACTOR shall execute appropriate Change orders (or Written Amendments) covering:

i. Changes in the Work which are ordered by OWNER pursuant to paragraph 10.1, are required because of acceptance of defective Work under paragraph 13.13 or correcting defective Work under paragraph 13.14, or are agreed to by the parties;

ii. Changes in the Contract Price or Contract Time which are agreed to by the parties; and

iii. Changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 9.11; 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 6.28.

10.5. If notice 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 Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

## **ARTICLE 11**

### **CHANGE OF CONTRACT PRICE**

11.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at its expense without change in the Contract price.

11.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than seven (7) days after the occurrence of the event giving rise to the claim and stating the general nature of the claim.

Notice of the amount of the claim with supporting data shall be delivered within thirty (30) days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract price will be valid if not submitted in accordance with this paragraph 11.2.

11.3. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways;

- i. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1 through 11.9.3, inclusive),
- ii. By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6), or
- iii. On the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's Fee for overhead and profit (determined as provided in paragraph 11.6).

**Cost of the Work:**

11.4. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. 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 11.5 and shall include only the following items:

11.4.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Payroll costs for employees not 100% employed on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall be limited to salaries and wages, plus the cost of social security contributions; unemployment, excise and payroll taxes; workers' or workmen's compensation, health and retirement benefits; bonuses; sick leave; vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above but only to the extent authorized by OWNER.

11.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith.

All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that these discounts are passed through to OWNER.

11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work actually performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids will be accepted. If a 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 shall be determined in the same manner as CONTRACTOR's Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.4.4. Costs of special consultants (including, but not limited to, engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work, but only to the extent approved by OWNER.

11.4.5. Supplemental costs including the following:

11.4.5.2. Cost, including transportation to the Work site and maintenance at the Work site, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof, whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work, and OWNER will not reimburse for rental costs beyond the date the equipment or machine is not necessary for the Work.

11.4.5.4. Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

11.4.5.5. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

11.4.5.6. The cost of utilities, fuel consumed at the site and sanitary facilities at the site.

11.4.5.7. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty case items in connection with the Work.

11.4.5.8. Cost of premiums for additional Bonds and insurance required because of changes in the Work and premiums for property insurance coverage within the limits of the deductible amounts established by OWNER.

11.5. The term Cost of the Work shall not include any of the following:

11.5.1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditor, timekeepers, clerks and other personnel employed by CONTRACTOR, whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4 - all of which are to be considered administrative costs covered by the CONTRACTOR's Fee.

11.5.2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

11.5.3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

11.5.4. Cost of premium for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).

11.5.5. Cost due to the intentional acts or 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.

11.5.6. Costs due to inspection, testing or approval of any materials incorporated into the Work.

11.5.7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

**CONTRACTOR's Fee:**

11.6. The CONTRACTOR's Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.6.1. A mutually acceptable fixed fee; or if none can be agreed upon,

11.6.2. A fee based on the following considerations:

11.6.2.1. For costs incurred under paragraphs 11.4.1 and 11.4.2, CONTRACTOR's Fee shall be fifteen percent (15%) of the Cost of such Work;

11.6.2.2. For costs incurred under paragraph 11.4.3, CONTRACTOR's Fee shall be five percent (5%) of the Cost of such Work; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all Subcontractors shall be fifteen percent (15%) of the Cost of such Work;

11.6.2.3. No fee shall be payable on the basis of costs itemized under paragraphs 11.4 and 11.5;

11.6.2.4. The amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease, plus a deduction in CONTRACTOR's Fee by an amount equal to ten percent (10%) of the net decrease; and

11.6.2.5. 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 11.6.2.1 through 11.6.2.4, inclusive.

11.7. Whenever the cost of any Work is to be determined pursuant to paragraphs 11.4. or 11.5, CONTRACTOR shall submit in form acceptable to ENGINEER an itemized cost breakdown, together with supporting data.

**Cash Allowances:**

11.8. 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 done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to ENGINEER. CONTRACTOR agrees that:

11.8.1. The 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

11.8.2. CONTRACTOR's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in allowances. No demand for additional payment on account of any thereof will be valid.

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.

**Unit Price Work:**

11.9.1. 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 established unit prices for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Agreement. 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 in accordance with paragraph 9.10.

11.9.2. 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.

11.9.3. Where 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 there is no corresponding adjustment with respect to any other item of Work and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

**ARTICLE 12**

**CHANGE OF CONTRACT TIME**

12.1. The Contract Time may only be changed by a Change Order or a Written Amendment. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than seven (7) days after the occurrence of the event giving rise to the claim) and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within thirty (30) days after such occurrence (unless ENGINEER allows in writing an additional period of time to ascertain written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event). All claims for adjustment in the Contract Time shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2. All equipment delivery and subcontractor or supplier performance shall be considered to be within the control of CONTRACTOR. No time extensions shall be granted for delays due to manufacturing, delivery, or failure to perform under the contract. No time extension shall be granted unless CONTRACTOR can demonstrate, with the concurrence of ENGINEER, that the Contract Time requires modification.

12.3. All time limits stated in the Contract Documents are of the essence of the Agreement.

12.4. Claims for extension of Contract Time will be approved by OWNER only if the item or the event which causes the delay, is outside the control of CONTRACTOR and affects the path of critical events of the Work. In such case, an extension of time will then be allowed to equal the number of days by which this path of events is lengthened. If required by ENGINEER, CONTRACTOR shall indicate this path of critical events, by diagram or narrative, in such detail as may be necessary to justify the claim and establish the number of days delay.

The path of critical events mentioned herein is defined as that series of interdependent construction events which must be sequentially performed and which require a longer total time to perform than any other such series.

### **ARTICLE 13**

#### **WARRANTY AND GUARANTEE: TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

##### **Warranty and Guarantee:**

13.1. CONTRACTOR warrants and guarantees to OWNER and ENGINEER that all Work will be in accordance with the Contract Documents, will operate or function as contemplated by the Contract Documents, and will not otherwise be defective. Prompt notice of all defects shall be given by OWNER to CONTRACTOR. All defective work, whether or not in place, may be rejected, corrected or accepted as provided in this Article 13.

##### **Access to Work:**

13.2. ENGINEER and ENGINEER's representatives, other representatives of OWNER, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

##### **Tests and Inspections:**

13.3. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests or approvals. Prompt notice of all observed defects shall be given to the CONTRACTOR. CONTRACTOR shall give at least forty-eight (48) hours notice to ENGINEER prior to all required inspections, tests or approvals, unless otherwise provided.

13.4. If Laws and Regulation of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish ENGINEER the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with OWNER's or ENGINEER's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation of the Work. All cost of all inspections, tests, certifications and approvals required by the Contract Documents shall be paid by the CONTRACTOR. All re-testing requested by the ENGINEER, in its sole discretion, shall be paid for by the CONTRACTOR.

13.5. All inspections, tests or approvals (other than those required by Laws or Regulations of any public body having jurisdiction over the Work) shall be performed by organizations acceptable to OWNER and CONTRACTOR (or by ENGINEER if so specified).

13.6. If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of ENGINEER, the covered Work must, if requested by ENGINEER, be uncovered for observation, testing and inspection. Such uncovering shall be at CONTRACTOR's expense, unless CONTRACTOR has given ENGINEER three (3) business Work days' notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.7. Neither prior observations by ENGINEER nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR's obligations to perform the Work in full compliance with the Contract Documents.

**Uncovering Work:**

13.8. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation at CONTRACTOR's expense whether found defective or not.

13.9. If ENGINEER without previous notification to CONTRACTOR 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. If it is found that such Work is defective, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals), and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the OWNER may make a claim therefor as provided in Article 11. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

**Owner May Stop the Work:**

13.10 If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or 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 or any other party.

**Correction or Removal of Defective Work:**

13.11 If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with nondefective Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

**Two Year Correction Period:**

13.12 If within two (2) years after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or 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, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions, either correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with nondefective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss, interruption of services provided by OWNER or damage, OWNER, in its sole discretion, may have the defective Work corrected or removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR. 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 or by Written Amendment.

**Acceptance of Defective Work:**

13.13. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, OWNER may do so. Notwithstanding same, CONTRACTOR shall not be relieved from and shall continue to bear all direct, indirect and consequential costs attributable to OWNER's acceptance of such defective Work (such costs to be approved by ENGINEER as to reasonableness and to include, but not limited to, fees and charges of engineers, architects, attorneys and other professionals), including the costs of evaluation and determination of such defective work. 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 a corresponding decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an amount will be paid by CONTRACTOR to OWNER which compensates OWNER in full for such costs.

**Owner May Correct Defective Work:**

13.14. If CONTRACTOR fails within a reasonable time after written notice of ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.11 or if CONTRACTOR fails to comply with any other provision of the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven (7) days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously to the extent necessary to complete corrective and remedial measures. 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 such access to the site as may be necessary to enable OWNER to exercise the rights and remedies under this paragraph.

All direct, indirect and consequential costs of OWNER in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by ENGINEER, and a Change Order will be issued incorporating the necessary revisions if the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11.

Such direct, indirect and consequential costs will include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder. The rights of OWNER under this paragraph are cumulative and in addition to any other rights and remedies OWNER may have.

## **ARTICLE 14**

### **PAYMENTS TO CONTRACTOR AND COMPLETION**

#### **Schedule of Values:**

14.1. The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payment on account of Unit Price Work will be based on the number of units completed.

#### **Application for Progress Payment:**

14.2. At least twenty (20) days before each progress payment is scheduled (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 and other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. With each Application for Payment, CONTRACTOR shall submit partial releases of liens from the previous Application for Payment from all lienors.

#### **CONTRACTOR's Warranty of Title:**

14.3. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to OWNER not later than the time of payment, free and clear of all Liens.

#### **Review of Applications for Progress Payment:**

14.4. ENGINEER shall establish a procedure whereby each Application for Payment is marked as received on the date on which it is delivered to ENGINEER. 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. Ten (10) days after presentation of the Application for Payment with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

14.5. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's on-site observations of the Work in progress as an experienced and qualified design professional and on ENGINEER's review of the application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of ENGINEER's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation); and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment ENGINEER will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents or that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or OWNER to withhold payment to CONTRACTOR.

14.6. ENGINEER's recommendation of final payment will constitute an additional representation by ENGINEER to OWNER that the conditions precedent to CONTRACTOR's being entitled to final payment as set forth in paragraph 14.13 have been fulfilled.

14.7. ENGINEER may refuse to recommend the whole or any part of any payment, if in ENGINEER's opinion, it would be incorrect to make such representations to OWNER. ENGINEER may also refuse to recommend any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify and such payment previously recommended, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

- i. The Work is defective, delayed or completed Work has been damaged or requires correction or replacement;
- ii. The Contract Price has been reduced by Written Amendment or Change Order;
- iii. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.14; or
- iv. Of ENGINEER's actual knowledge of the occurrence of any of the events enumerated in paragraph 15.2.

OWNER may refuse to make payment of the full amount recommended by ENGINEER because claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work or Liens have been filed in connection with the Work, or there have been claims made on the CONTRACTOR's Bond, or there are other items entitling OWNER to a setoff against the amount recommended, but OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action.

**Substantial Completion:**

14.8. 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. CONTRACTOR shall prepare and submit to the ENGINEER a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete or, if the ENGINEER's inspection discloses any item, whether or not included on the CONTRACTOR's list which is not sufficiently complete in accordance with the Contract Documents so that the OWNER can occupy or utilize the Work or designated portion thereof for its intended use, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. The CONTRACTOR shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the

ENGINEER. In such case, the CONTRACTOR shall then submit a request for another inspection by the ENGINEER to determine Substantial Completion.

If ENGINEER considers the Work substantially complete, ENGINEER will, within 7 days, prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion.

There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven (7) days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will, within fourteen (14) days after submission of the tentative certificate to OWNER, notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the work substantially complete, ENGINEER will, within said fourteen (14) days, execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operations, safety, maintenance, heat, utilities, insurance and warranties. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER 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.

14.9 OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list of items to be completed or corrected.

**Partial Utilization:**

14.10. Use by OWNER of any finished 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 useable part of the Work that can be used by OWNER without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER and ENGINEER that said part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. 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 Completion for that part of the Work. Within a reasonable time after either 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 the 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 paragraphs 14.8 and 14.9 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.

14.10.2. OWNER may at any time request CONTRACTOR in writing to permit OWNER to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to ENGINEER and within a reasonable time thereafter OWNER, CONTRACTOR and

ENGINEER shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment.

If CONTRACTOR does not object in writing to OWNER and ENGINEER that such part of the Work is not ready for separate operation by OWNER, ENGINEER will finalize the list of items to be completed or corrected and will deliver such list to OWNER and CONTRACTOR, together with a written recommendation as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work which will become binding upon OWNER and CONTRACTOR at the time when OWNER takes over such operation (unless they shall have otherwise agreed in writing and so informed ENGINEER). During such operation and prior to Substantial Completion of such part of the Work, OWNER shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

14.10.3. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.7 in respect to property insurance.

**Final Inspection:**

14.11 Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing, within thirty (30) days of CONTRACTOR's written notice, 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 remedy such deficiencies.

**Final Application for Payment:**

14.12. After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents as required by the Contract Documents, and after ENGINEER has indicated that the Work is acceptable, CONTRACTOR may make final Application for Payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all liens or claims on CONTRACTOR's Bond arising out of or filed in connection with the Work. In lieu thereof and if approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety if any, to final payment. If any Subcontractor or Supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien or claim. Absent the furnishing of such Bond, the remaining contract price due that subcontractor or supplier shall be withheld from the payments due CONTRACTOR, or if the amount subcontractor or supplier is due is more than that due CONTRACTOR, then CONTRACTOR shall pay OWNER the amount within ten (10) days of demand.

**Final Payment and Acceptance:**

14.13. 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 -all 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 (10) days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application to OWNER for payment. Thereupon ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provision of paragraph 14.16. Otherwise, ENGINEER will return the application 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. Fifteen (15) days after presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance, and with ENGINEER's recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by OWNER to CONTRACTOR.

14.14. If a good faith dispute exists as to whether one or more items identified by ENGINEER pursuant to paragraphs 14.11 or 14.13 have not been adequately completed pursuant to the Contract, then OWNER may continue to withhold an amount not to exceed 150% of the total cost to complete or remedy such items, together with 150% of the costs associated with any other factors identified in paragraph 14.7. OWNER shall not be required to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought on the CONTRACTOR's Bond, or otherwise the subject of a claim or demand by OWNER, including, but not limited to, those factors set forth in paragraph 14.7.

14.15. 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 and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted less any amounts attributable to liquidated damages, together with the reasonable costs as determined by the OWNER for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, handling any outstanding or threatened claims, and less a final hold-back as follows. The OWNER may retain a sum equal to 150% of the estimated cost of completing these items or otherwise remediating defects. OWNER shall also still be permitted to hold back any amounts attributable to liquidate damages. If the remaining balance to be held by OWNER for Work not full completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the surety of 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.

**Contractor's Continuing Obligation:**

14.16. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by ENGINEER, or the issuance of a certificate of Substantial Completion, or any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13, nor any correction of defective Work by OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents.

**Waiver of Claims:**

14.17. The making and acceptance of final payment will constitute a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and identified by CONTRACTOR as unsettled at the time of the final Application for Payment. CONTRACTOR shall comply with the Florida Construction Lien Law prior to receiving progress payments or the final payment.

14.18. CONTRACTOR shall certify that each Application for Payment represents the correct amount of the cost reimbursable to the CONTRACTOR under the terms of this Agreement and shall also certify as follows:

A. There are no known mechanic's or materialmen's liens outstanding at the date of this Application, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application, and that, except for such bills not paid but so included, there is no known basis for the filing of any mechanic's or materialmen's liens for the Work, and that waivers and releases of lien from all subcontractors and materialmen have been obtained in such form as to constitute an effective waiver of lien under the laws of the State of Florida.

B. CONTRACTOR shall furnish with each Application for Payment waivers of lien for itself and for each of its subcontractors, together with such other forms as required by Owner, in order to assure an effective waiver of mechanics' or materialmen's liens in compliance with the laws of the State of Florida. Notwithstanding all of the provisions of this Agreement, OWNER shall not be obligated to make any payments to CONTRACTOR until CONTRACTOR has complied with the provisions of Chapter 713 of the Florida Statutes, the Florida Construction Lien Law. OWNER and CONTRACTOR agree that CONTRACTOR's compliance with the Florida Construction Lien Law shall take precedence over all provisions of this Agreement.

C. CONTRACTOR's submission of an Application for Payment shall constitute CONTRACTOR's representation and warranty that all Work of each Subcontractor and all trades for which payment is sought has been completed by such person performing said Work according to the specifications in the Contract Documents and has been fully approved and inspected by CONTRACTOR.

**ARTICLE 15**

**SUSPENSION OF WORK AND TERMINATION**

**Owner May Suspend Work:**

15.1. OWNER may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) 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 allowed an extension of the Contract Time directly attributable to any suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

**Termination by OWNER:**

15.2. Termination by OWNER for convenience:

Upon seven (7) days written notice to CONTRACTOR, the OWNER may, at any time, terminate the Agreement for the OWNER's convenience and without cause and without prejudice to any other rights or remedies of the OWNER.

Upon receipt of written notice from the OWNER of such termination for the OWNER's convenience, the CONTRACTOR shall:

- 1) cease operations as directed by the OWNER in the notice;
- 2) take actions necessary, or that the OWNER may direct, for the protection and preservation of the Work; and
- 3) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the OWNER's convenience, the CONTRACTOR shall only be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work in accordance with this Agreement.

15.3. Termination by OWNER for cause. The OWNER may terminate the Agreement for cause upon the occurrence of any one or more of the following events:

i. If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

ii. If a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to Bankruptcy or insolvency;

iii. If CONTRACTOR makes a general assignment for the benefit of creditors;

iv. If a trustee, receiver custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors;

v. If CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

- vi. If CONTRACTOR 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 established under paragraph 2.6 as revised from time to time);
- vii. If CONTRACTOR disregards Laws or Regulations including but not limited to those specifically referenced in this Agreement;
- viii. If CONTRACTOR disregards the authority of ENGINEER;
- ix. If CONTRACTOR is placed on a convicted vendor list or otherwise convicted of any public entity crime or crime involving fraud or dishonesty; or
- x. If CONTRACTOR otherwise violates in any substantial way any provision of this Agreement or the Contract Documents; or
- xi. If CONTRACTOR repeatedly refuses or fails to supply enough properly skilled workers or proper materials; or
- xii. If CONTRACTOR fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the CONTRACTOR and its subcontractors; or
- xiii. If CONTRACTOR repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority.

OWNER may, after giving CONTRACTOR (and the surety, if there be one) seven (7) days' written notice and to the extent permitted by applicable law, terminate the services of CONTRACTOR, 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), 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 finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment in accordance with this Agreement until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) and liquidated damages for delay, such excess will be paid to CONTRACTOR. If such costs and liquidated damages for delay exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER, or OWNER shall be entitled to keep any monies already withheld, whichever is applicable. Such costs incurred by OWNER will be approved as to reasonableness by ENGINEER and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph, OWNER shall not be required to obtain the lowest price for the Work performed.

15.4. 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 monies due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

**Contractor May Stop Work or Terminate:**

15.5. The CONTRACTOR may terminate the Agreement if the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the CONTRACTOR or its subcontractor, sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the CONTRACTOR, for any of the following reasons:

- 1) Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- 2) An act of government, such as a declaration of national emergency that requires all Work to be stopped.

The provisions of this paragraph shall not relieve CONTRACTOR of the obligations under paragraph 6.28 to carry on Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER. If CONTRACTOR, upon seven days' written notice to the OWNER and ENGINEER, terminates the Agreement, it shall be only entitled to recover from the OWNER payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination. CONTRACTOR shall not be entitled to, and waives, any claim for consequential damages this includes damages incurred by the CONTRACTOR for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

## ARTICLE 16

### MISCELLANEOUS

#### **Giving Notice:**

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

#### **Computation of Time:**

16.2.1. 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.

16.6.2. A calendar day of twenty-four (24) hours measured from midnight to the next midnight shall constitute a day.

#### **General:**

16.3. Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 16.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

16.4. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular, but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.29, 6.30, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, 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, and 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. All representations, warranties and guarantees made in the Contract Documents will survive final payment and termination of completion of the Agreement.

16.5. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or a public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business with any

public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY 2 for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

16.6. Venue of any dispute concerning the Agreement shall be in Palm Beach County Circuit Court.

**Compliance with Public Records Laws:**

16.7. Contractor agrees that it will comply with all public record laws, including, but not limited, Florida Statute Section 119.0701, as amended from time to time. Specifically, and without limitation, (Bidder/Seller/Contractor) hereby agrees to:

16.7.1. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform that service. Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a sub recipient.

16.7.2. Provide the public with access to public records on the same terms and conditions that the Town would provide the records and at a cost that does not exceed the cost provided in chapter 119, Florida Statutes, as amended from time to time, or as otherwise provided by law.

16.7.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

16.7.4. Meet all requirements for retaining public records and transfer, at no cost, to the Town all public records in possession of the (Bidder/Seller/Contractor) upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

**Access to Records:**

16.8. The following access to records requirements apply to this contract:

a) The CONTRACTOR agrees to provide OWNER, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

b) The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

c) The CONTRACTOR agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

d) In compliance with the Disaster Recovery Act of 2018, the OWNER and the CONTRACTOR acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**INTERLOCAL AGREEMENT BETWEEN THE TOWN OF LAKE PARK, FLORIDA  
AND  
SEACOAST UTILITY AUTHORITY  
FOR JOINT PARTICIPATION AND PROJECT FUNDING  
FOR CONSTRUCTION AND UTILITY ADJUSTMENT OF  
LAKE SHORE DRIVE DRAINAGE AND UTILITY IMPROVEMENTS  
LAKE PARK PROJECT BID NO. 106-200**

**THIS Interlocal Agreement**, (hereinafter “Agreement”), is made as of the 16 day of December, 2020, by and between the Town of Lake Park, a municipal corporation of the State of Florida, 535 Park Avenue, Lake Park, Florida, 33403 (hereinafter “TOWN”) and the Seacoast Utility Authority, a municipal corporation existing under the laws of Florida, (hereinafter “AUTHORITY”), each one constituting a public agency defined in Part I of Chapter 163, Florida Statutes.

**WHEREAS**, Section 163.01, Florida Statutes, known as the “Florida Interlocal Cooperation Act of 1969”, authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage, thereby providing services and facilities that will harmonize geographic, economic, population, and other factors influencing the needs and development of local communities, and

**WHEREAS**, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into Interlocal Agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

**WHEREAS**, the TOWN intends to make drainage and roadway improvements to Lake Shore Drive (hereinafter the “Project”); and

**WHEREAS**, the TOWN and the AUTHORITY desire to jointly participate in the construction of utility adjustments to the AUTHORITY’S water main, force main and other improvements within the Project area, hereinafter referred to as the “Work”; and

**WHEREAS**, both the TOWN and AUTHORITY declare that it is in the public interest to construct the Work as part of the aforementioned Project; and

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and representations contained herein, the parties agree as follows:

Section 1. Recitals.

The above recitals are true and correct and are incorporated herein.

Section 2. Project and Work to be completed by the TOWN:

## SEACOAST UTILITY AUTHORITY INTERLOCAL AGREEMENT

TOWN shall provide construction and administrative services to the Project, and will assemble bid documents that identify the Authority's portion of the work as a bid alternate. Said Bid Documents will include the Work as shown in AUTHORITY prepared Utility Matrix, Applicable Technical Specifications, Standard Construction Details, and Approved Product List.

### Section 3. Responsibilities and Duties:

A. AUTHORITY shall reimburse TOWN a total estimated cost including 10% contingency of \$822,904.50, provided TOWN performs pursuant to the terms and conditions of this Agreement for all potable water main and sanitary sewer Work associated with the Bid Tabulations (Exhibit "A"). Any cost exceeding this amount attributable to Seacoast Utility Authority items shall be paid by the AUTHORITY.

B. Costs shall be based upon actual contract costs using contract unit prices and actual constructed quantities, said quantities being measured by the TOWN with the concurrence of the AUTHORITY.

C. TOWN shall obtain written approval from the AUTHORITY in advance of any change orders, including any costs associated with the AUTHORITY'S failure to approve change orders in a timely manner, which increase the cost attributable to the Work to an amount greater than the contract amount as stated in Paragraph A of this Section. The AUTHORITY shall not unreasonably withhold its approval.

D. TOWN shall secure all necessary easements and permits required to perform the Project.

E. TOWN shall publicly bid, administer, construct and inspect the Project and Work in.

F. TOWN shall require the contractor to provide a Public Construction Bond in an amount equal to the contractor's bid for the Project and the Work.

G. Upon completion of the Project, the AUTHORITY shall repair and maintain the Work, at AUTHORITY'S expense.

### Section 4. Payments/Invoicing and Reimbursement:

The TOWN shall invoice the AUTHORITY on a periodic basis during construction of the Project. The AUTHORITY agrees to reimburse the TOWN for all documented costs of the Work in the amount established in Section 3.A. Upon TOWN'S submission of acceptable documents needed to substantiate its costs for the Work, AUTHORITY shall provide said funds to TOWN on a reimbursement basis with 30 days of receipt of all required documents. TOWN shall submit all invoices to the AUTHORITY identifying the Work, including TOWN'S total expenditure for the Project, and identifying the amount attributable to the Work under Exhibit "A". TOWN shall

## SEACOAST UTILITY AUTHORITY INTERLOCAL AGREEMENT

supply any further documentation such as copies of paid receipts, canceled checks, invoices and other documents deemed reasonably necessary by the AUTHORITY within 7 calendar days of request by the AUTHORITY. Invoices and documentation received from TOWN shall be reviewed and approved by the AUTHORITY only to the extent necessary to document that the TOWN's expenditures have been made in conformity with the Agreement. Invoices shall be paid within 30 days following approval. In no event shall the AUTHORITY provide advance funding to the Town, unless otherwise as mutually agreed upon.

The Project will be administered by the TOWN. Only those costs incurred by the TOWN relating to the Work are eligible for reimbursement by the AUTHORITY pursuant to the terms and conditions hereof. In the event the TOWN ceases or suspends the Project or the Work for any reason, the AUTHORITY shall reimburse the TOWN for the Work completed as of the date the TOWN uses to suspend the Work. Any remaining unpaid portion of this Agreement shall be retained by the AUTHORITY and the AUTHORITY shall have no further obligation to honor reimbursement requests submitted by the TOWN.

### Section 5. Repayment:

TOWN shall repay the AUTHORITY for all unauthorized, illegal or unlawful expenditures of revenues, including those it may discover after the termination of this Agreement.

### Section 6. Access and Audits:

TOWN and AUTHORITY shall maintain books, records, and documents to justify all charges, expenses and costs incurred under this Agreement for the Project, in accordance with Generally Accepted Accounting Principles (GAAP), as promulgated by the Government Finance Officers Association from time to time. The TOWN and AUTHORITY shall have access to all books, records, and documents as required in this Agreement, and for at least (3 years after completion of the Project. In the event any work is subcontracted by TOWN, TOWN shall similarly require each Contractor and/or subcontractor to maintain and allow access to such records for audit purposes.

### Section 7. Independent Contractor:

TOWN and the AUTHORITY are and shall be, in the performance of all work, service, and activities for the Project pursuant to the Agreement as Independent Contractors and not employees, agents, or servants of the other party. All TOWN employees engaged in the work or services performed as part of the Project pursuant to this Agreement shall at all times, and in all places be subject to TOWN'S sole direction, supervision, and control. All AUTHORITY employees engaged in the work or services performed for the Project pursuant to this Agreement shall at all times, and in all places, be subject to AUTHORITY'S sole direction, supervision, and control. The Parties shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the parties relationship and the relationship of its employees to the other party shall be that of an Independent Contractor and not as employees or agents of the other.

## SEACOAST UTILITY AUTHORITY INTERLOCAL AGREEMENT

TOWN does not have the power or authority to bind the AUTHORITY in any promise, Agreement or representation.

### Section 8. Personnel:

TOWN represents that it has, or will secure at its own expense, all necessary personnel required to perform the service under the Agreement. Such personnel shall not be employees of or have any contractual relationship with the AUTHORITY.

All of the work and services required herein under as part of the Project shall be performed by TOWN or its contractor, and personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

All of TOWN'S personnel, Contractors and all subcontractors while on TOWN premises shall conduct themselves in an acceptable manner and follow acceptable safety and security procedures.

### Section 9. Indemnification:

The AUTHORITY and TOWN recognize they could incur liability for certain tortious acts of it agents, officers, employees and invitees to the extent and limits provided in Section 768.28, Florida Statutes. To the extent permitted by law, the AUTHORITY and TOWN shall indemnify, defend and hold the other harmless against any actions, claims and damages arising out of the their own negligence in connection with the Work and the Project and the use of the funds provided under this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute an Agreement by the AUTHORITY or TOWN to indemnify each other for sole negligence, or willful or intentional acts of the other. The foregoing indemnification shall survive termination of the Agreement.

No provision of the Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the TOWN and/or AUTHORITY.

### Section 10. Annual Appropriation:

All provisions of this Agreement calling for the expenditure of ad valorem tax money by either the TOWN or the AUTHORITY are subject to annual budgetary funding and should either Party involuntarily fail to fund any of their respective obligations pursuant to the Agreement, this Agreement may be terminated.

**SEACOAST UTILITY AUTHORITY INTERLOCAL AGREEMENT**

Section 11. Breach and Opportunity to Cure:

The parties expressly covenant and agree that in the event either party is in default of its obligations under this Agreement, each party shall have 30 days written notice before exercising any of its rights.

Section 12. Enforcement Costs:

Any cost or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties.

Section 13. Notice:

All notices required to be given under this Agreement shall be in writing, and deemed sufficient to each party when sent by United States Mail, postage prepaid, to the following:

All notices to the AUTHORITY shall be sent to:

Rim Bishop, Executive Director  
Seacoast Utility Authority  
4200 Hood Road  
Palm Beach Gardens, FL 33410

All notices to the TOWN shall be sent to:

Town Manager  
Town of Lake Park  
535 Park Avenue  
Lake Park, FL 33403

Section 14. Modification and Amendment:

Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith.

Section 15. Remedies:

This Agreement shall be governed by and in accordance with the laws of the State of Florida. Any legal action necessary to enforce this Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity by statute or otherwise. No single or

## SEACOAST UTILITY AUTHORITY INTERLOCAL AGREEMENT

partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

### Section 16. No Waiver:

Any waiver by either Party of its right with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter. The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.

### Section 17. Joint Preparation:

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial constraint, be construed more severely against one of the parties than the other.

### Section 18. Non-Discrimination:

TOWN and AUTHORITY agree that both parties shall not conduct business with nor appropriate any funds for any organization or entity that practices discrimination on the basis of race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information. TOWN will ensure that all contracts let for the Project pursuant to the terms of this Agreement will contain a similar non-discrimination clause.

### Section 19. Execution:

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

### Section 20. Filing:

A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

### Section 21. Termination:

This Agreement may be terminated by either party to this Agreement upon 60 days written notice to the other party, except as otherwise addressed in this Agreement. However, once the Project has commenced, it shall be prosecuted to completion and this Agreement shall be binding upon the parties and neither party shall have the right to terminate the subject Agreement.

## SEACOAST UTILITY AUTHORITY INTERLOCAL AGREEMENT

### Section 22. Compliance with Codes and Laws:

TOWN and AUTHORITY shall abide by all applicable federal, state and local laws, orders, rules and regulations when performing under this Agreement. TOWN and AUTHORITY further agree to include this provision in all subcontracts issued as a result of this Agreement.

### Section 23. Office of the Inspector General:

Palm Beach County has established the Office of the Inspector General, in Palm Beach County Code Section 2-421-2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past present and proposed Town contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All contractors and parties doing business with the Town and receiving Town funds shall fully cooperate with the Inspector General including receiving access to records relating to Bid or any resulting contract.

### Section 24. Public Entity Crime Certification:

As provided in F.S. 287.132-133, as may be amended from time to time, by entering into this Agreement or performing any work in furtherance hereof, TOWN shall have its contractors certify that their affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S.287.133 (3) (a).

### Section 25. Severability:

If any section, paragraph, sentence, clause or provision of this Agreement is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remaining portions of this Agreement.

### Section 26. Entirety of Agreement:

TOWN and AUTHORITY agree that this Agreement, including the Bid Documents described in Section 2, sets forth the entire Agreement between the parties, and there are not promises or understandings other than those stated herein.

### Section 27. Survival:

The obligations, rights, and remedies of the Parties hereunder, which by their nature survive the termination of this Agreement or the completion of the Project, shall survive such termination or Project completion and inure to the benefit of the Parties.

SEACOAST UTILITY AUTHORITY INTERLOCAL AGREEMENT

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

SEACOAST UTILITY AUTHORITY

TOWN OF LAKE PARK, FLORIDA  
BY ITS  
TOWN COMMISSION

BY:   
Authority Chair  
John D. Agostino

BY:   
Michael O'Rourke, Mayor

ATTEST:

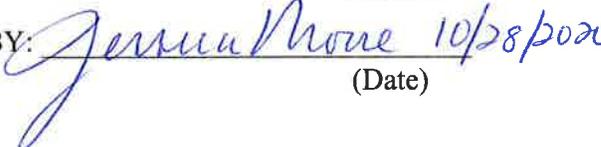
JESSICA MOORE,  
AUTHORITY CLERK



ATTEST:

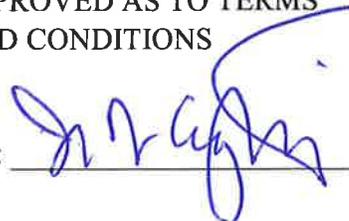
VIVIAN MENDEZ,  
TOWN CLERK



BY:   
(Date) 10/28/2020

BY:   
(Date) 12/16/2020

ATTEST:  
APPROVED AS TO TERMS  
AND CONDITIONS

BY: 

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

BY:   
Nathan Nason, Authority Attorney

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

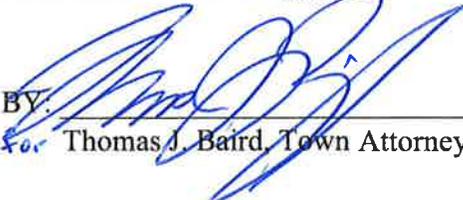
BY:   
For Thomas J. Baird, Town Attorney

Exhibit "A"

**BID TABULATION**  
**Seacoast Utility Authority**  
**Lakeshore Drive Water and Sewer Improvements**

Item No.	Item Description	Unit	Estimated Quantity	Foster Marine Contractors, Inc.	
				Unit Price	Cost
<b>Sanitary Sewer</b>					
A2-1	Remove Existing Gravity Sanitary Sewer Main	LF	550	\$ 5.00	\$ 2,750.00
A2-2	Remove Existing Sanitary Sewer Manhole	EA	4	\$ 800.00	\$ 3,200.00
A2-3	4' Dia. MH (6"-10")	EA	2	\$ 11,500.00	\$ 23,000.00
A2-4	Connect New / Existing Sanitary Sewer Main to New / Existing Sanitary Sewer MH	EA	2	\$ 1,300.00	\$ 2,600.00
A2-5	8" PVC SDR 26 Sanitary Sewer Pipe (6'-8")	LF	285	\$ 61.00	\$ 17,550.00
A2-6	8" PVC SDR 26 Sanitary Sewer Pipe (6'-10")	LF	200	\$ 80.00	\$ 20,000.00
A2-7	Remove Existing Sewer Lateral & Install 6" Single Sanitary Sewer Lateral w/ Clean-Out	EA	3	\$ 2,100.00	\$ 8,300.00
A2-8	Remove Existing Sewer Lateral & Install 8" Sanitary Sewer Lateral w/ Clean-Out	EA	1	\$ 2,900.00	\$ 2,900.00
A2-9	Remove Existing Sewer Lateral & Install 10" Single Sanitary Sewer Lateral & Connect to Existing Lateral at ROW Line	EA	1	\$ 3,800.00	\$ 3,800.00
A2-10	Cut & Cap Existing Sanitary Sewer Lateral at Wye; Remove or Abandon & Grout Existing Lateral from Main to RAW line (includes all trenching & excavation required) (Dwg. C-21 & C-22)	EA	3	\$ 1,000.00	\$ 3,000.00
A2-11	Plug Existing Western Invert Inside and Outside of Manhole at STA 51+57; Remove or Abandon & Grout Existing Lateral from Manhole to RAW line (Dwg. C-22)	LS	1	\$ 1,500.00	\$ 1,500.00
A2-12	Sanitary Sewer Bypass Pumping	LS	1	\$ 30,000.00	\$ 30,000.00
A2-13	Open-Cut Pavement Trench Repair	LF	30	\$ 100.00	\$ 3,000.00
<b>Subtotal Sanitary Sewer:</b>					<b>\$ 120,405.00</b>
<b>Potable Water Main</b>					
A2-14	4" DIP (CL51) WM (Restrained Joints), cement lined	LF	20	\$ 120.00	\$ 2,400.00
A2-15	8" DIP (CL51) WM (Restrained Joints), cement lined	LF	300	\$ 80.00	\$ 24,000.00
A2-16	8" DIP (CL51) WM (Restrained Joints), cement lined w/ FKM gaskets (Dwg. C-24)	LF	150	\$ 85.00	\$ 12,750.00
A2-17	8" DIP (CL51) WM (Restrained Joints), cement lined	LF	2,950	\$ 64.00	\$ 188,800.00
A2-18	8" DIP (CL51) WM (Push-On), cement lined	LF	550	\$ 50.00	\$ 27,500.00
A2-19	4"x4" Tapping Tee & 4" Tapping Valve	EA	1	\$ 4,500.00	\$ 4,500.00
A2-20	6"x6" Tapping Tee & 6" Tapping Valve	EA	4	\$ 5,000.00	\$ 20,000.00
A2-21	8"x8" Tapping Tee & 8" Tapping Valve	EA	1	\$ 5,300.00	\$ 5,300.00
A2-22	6" Gate Valve	EA	14	\$ 1,650.00	\$ 23,100.00
A2-23	8" Gate Valve	EA	22	\$ 1,950.00	\$ 42,900.00
A2-24	6" Line Stop	EA	1	\$ 8,100.00	\$ 8,100.00
A2-25	DIP Compact Fittings (cement-lined)	TON	7.5	\$ 8,000.00	\$ 60,000.00
A2-26	Install New Single Water Service (1"-2") on Proposed WM & Connect to Existing Meter Box	EA	12	\$ 2,500.00	\$ 30,000.00
A2-27	Install New Single Water Service (2") w/ Meter Box on Proposed WM	EA	1	\$ 3,300.00	\$ 3,300.00
A2-28	Install New Double Water Service (2") on Proposed WM & Connect to Existing Meter Box	EA	1	\$ 3,700.00	\$ 3,700.00
A2-29	Install New Single Water Service (1"-2") on Existing WM, incl. Corp Stop (1"-2"), & Connect to Existing Meter Box	EA	1	\$ 4,000.00	\$ 4,000.00
A2-30	Connect to Existing Water Main / Fire Line (4"-8") / Master Meter	EA	21	\$ 2,500.00	\$ 52,500.00
A2-31	Install Fire Hydrant Assembly	EA	5	\$ 5,500.00	\$ 27,500.00
A2-32	Remove Existing Fire Hydrant Assembly	EA	5	\$ 800.00	\$ 4,000.00
A2-33	Sample Point	EA	20	\$ 800.00	\$ 16,000.00
A2-34	Fill & Flush Assembly	EA	20	\$ 1,000.00	\$ 20,000.00
A2-35	Terminal Blow-Off Assembly	EA	4	\$ 2,100.00	\$ 8,400.00
A2-36	1" ARV w/ 4' Diameter MH at High Point	EA	1	\$ 8,500.00	\$ 8,500.00
A2-37	Abandon & Grout Existing 8" WM, incl Plugs	LF	4,100	\$ 4.40	\$ 18,040.00
A2-38	Remove & Dispose of Existing 6" AC WM	LF	450	\$ 22.00	\$ 9,900.00
A2-39	Install Restraints on Existing WM up to 4 pipe joints on Lake Shore Drive @ STA 58+34 (Dwg. C-23)	LS	1	\$ 3,500.00	\$ 3,500.00
A2-40	Coordination with Gas Company for Utility Underground Relocations	LS	1	\$ 1,000.00	\$ 1,000.00
<b>Subtotal Potable Water Main:</b>					<b>\$ 627,890.00</b>
<b>TOTAL ALTERNATE 2</b>					<b>\$ 748,095.00</b>

October 9, 2020

John D'Agostino, Town Manager  
Town of Lake Park  
535 Park Avenue  
Lake Park, FL 33403.

Rim Bishop, Executive Director  
Seacoast Utility Authority  
4200 Hood Road  
Palm Beach Gardens, FL 33410

**Subject:        *Town of Lake Park and Seacoast Utility Authority  
Lake Shore Drive Drainage and Utility Improvements  
Bid Evaluation***

Dear Mr. D'Agostino and Mr. Bishop:

On Friday, October 2, 2020, at 1:00 PM, bids were received by the Town of Lake Park Lake Shore Drive Drainage and Utility Improvement Project. Seven (7) bids were received as follows:

<b>Name of Bidder</b>	<b>Base Bid Total Cost</b>	<b>Base Bid + Alternate 1 &amp; 2 Total Cost</b>
1. Foster Marine Contractors, Inc.	\$4,556,859.00	\$5,471,954.00
2. DP Development, LLC	\$4,660,209.99	\$5,558,977.34
3. Hinterland Group, Inc.	\$4,917,963.50	\$6,023,313.50
4. DS Eakins Construction Corp.	\$5,403,570.75	\$6,622,093.25
5. Gibbs & Register	\$5,789,534.50	\$6,731,635.50
6. Ferreira Construction Southern Division Co., Inc.	\$6,856,420.62	\$7,876,938.92
7. Man Con Inc.	\$7,122,888.00	\$8,417,126.50

Baxter & Woodman has reviewed the bid proposals submitted by each of the contractors and produced a Bid Tab, attached to this letter. One mathematical error was found in the bid submitted by Ferreira Construction Southern Division Co., Inc. Our bid tabulation determined their base bid to be \$6,856,420.62 while their bid submittal stated a base bid total of \$5,943,668.50.

The following summarizes our findings for the low bidder (Foster Marine Contractors, Inc.):

- The Contractor acknowledged Addenda No. 1, 2, and 3.
- The Contractor's office is located in Wellington, Florida.
- The Contractor has been in business for over 50 years.
- The Contractor's bid bond for 5% of the bid payment.
- The Schedule of Bid Prices was filled out correctly.
- The previous work experience provided by the Contractor was determined to be satisfactory.

Based on the specific project experience qualifications criteria established in the Bid Documents and based on Baxter & Woodman's review of the Bid Proposal provided by Foster Marine Contractors, Inc., we have determined that Foster Marine Contractors, Inc., is responsive, responsible and qualified to meet the contract requirements for the Base Bid, Alternate 1 and Alternate 2.

Should you have any questions regarding the information presented, please contact me at 561-425-7760.

Sincerely,

**BAXTER & WOODMAN, INC.**



Jeffrey G. Hiscock, P.E.  
Stormwater Department Manager

*Attachment: Bid Tabulation*  
B&W File No. 180551.00

