



REQUEST FOR PROPOSALS

REPAIRS TO TOBIE WILSON PARK

RFP# 2011-003

PROPOSAL DUE DATE: June 20, 2011

CONTACT PERSON:

Michael A. Pizzi, Town Attorney
Town of Medley
7777 N.W. 72nd Avenue
Medley, Florida 33166

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NOTICE TO CONTRACTORS

INVITATION TO BID # 2011-003

Sealed bids will be received by the **Town of Medley, Office of the Town Clerk, Town Hall, 7777 NW 72 Avenue, Medley, Florida 33166** for:

Repairs for Tobie Wilson Park

Bids are due: Monday, June 20, 2011, at 12:00 PM

Scope of Work: The Work consists of furnishing all materials, labor, and equipment necessary to achieve the following:

Make repairs to Tobie Wilson Park pursuant to design specifications

Minimum Requirements: Prospective Bidder shall hold a current certified license as a General Contractor from the State of Florida and must have a minimum of five (5) years experience under its current business name, in the construction of similar projects including five (5) separate project references of similar size, scope, and complexity, supported by references within the past five (5) years. The Bidder must self-perform at least twenty percent (20%) of the physical construction work.

The Bid can only be obtained by visiting the Town of Medley's website; <http://www.townofmedley.com> on or after June 6, 2011. **It is the sole responsibility of all firms to ensure the receipt of any addendum and it is recommended that firms periodically check the Town webpage for updates and the issuance of addenda.**

All bids shall be submitted in accordance with the Instructions to Bidders. Bids must be submitted in duplicate originals, at the time, date, and place above, bids will be publicly opened. **Any bids received after time and date specified will not be considered.** The responsibility for submitting a bid/proposal before the stated time and date is solely and strictly the responsibility of the bidder/Bidder. The Town is not responsible for any delay no matter what the cause.

YOU ARE HEREBY ADVISED THAT THIS INVITATION TO BID IS SUBJECT TO THE "CONE OF SILENCE".

Sincerely,

Michael A. Pizzi Jr., Town Attorney
Town of Medley, 7777 N.W. 72 Avenue, Medley, Florida 33166
Tel: 305-887-9541, Fax: 305-882-1491
www.townofmedley.com

Section 1 – Instructions for Submission

1. **Intention of Town**

It is the intention of Town to describe in this Invitation to Bid (“ITB”) the Project(s) to be completed in accordance with all codes and regulations governing all the Work to be performed under this Contract(s). Any work, labor, materials and/or equipment that may reasonably be inferred from the Contract as being required to produce the intended results shall be supplied by Contractor whether or not specifically called for in the Contract Documents. Where words, which have well-known technical or trade meanings 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 be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Bids and Contractor shall comply therewith. Town shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.

2. **Scope of Work**

The Work specified in this Bid consists of furnishing all labor, machinery, tools, means of transportation, supplies, equipment, materials, and services, and incidentals necessary to perform the following Work at a rate of progress that will ensure completion of the Work within the stipulated Contract Time.

Make repairs, not to exceed \$200,000 as specified in Exhibit “A”.

3. **Location of Project(s)**

Tobie Wilson Park, Medley, Florida 33166

4. **Performance of the Work**

Bidder must be capable of self-performing at least twenty percent (20%) of the physical construction Work. By submitting a Bid the Bidder certifies that it will utilize its own employees to meet this requirement. As part of the Bid, the Bidder must include the form entitled “Questionnaire”. Failure to complete and submit this form or to meet this requirement shall result in the Bid being deemed non-responsive. Where the Town determines that the Contractor is not meeting the minimum self-performance requirement during the performance of the Work, then the Contractor shall be deemed in default of the Contract and the Town reserves the right to take any necessary and appropriate action permitted by law or by the Contract Documents.

5. **Examination of Contract Documents and Site**

It is the responsibility of each Bidder, before submitting a response to this ITB to:

- Carefully review the ITB, including any Addendum and notify the Town of all conflicts, errors or discrepancies.

- Visit the site(s) or structure(s) to become familiar with conditions that may affect costs, progress, performance or furnishing of the Work.
- Take into account federal, state and local (Town and Miami-Dade County including, without limitation the Town Purchasing Ordinance and Florida Building Code) laws, regulations, ordinances that may affect a Bidder's ability to perform the Work.
- Study and carefully correlate Contractor's observations with the requirements of the ITB.

The submission of a Bid in response to this solicitation shall constitute an incontrovertible representation by Bidder that it will comply with the requirements of the Contract Documents and that without exception, the response is premised upon performing and furnishing Work required under the Contract Documents and that the Contract Documents are sufficient in detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

6. Addendum

Only questions answered by written Addendum will be binding. Oral and other interpretations or clarifications will be without legal binding effect and should not be relied upon in preparations of a Bid response. All questions about the meaning or intent of the Contract Documents are to be directed to the Town Attorney in writing, to the attention of Michael A. Pizzi or at mpizzi@townofmedley.com

Interpretations or clarifications considered necessary by the Town Clerk in response to such questions will be issued by the Town by means of Addendum posted on the Town webpage. **Written questions should be received no less than ten (10) calendar days prior to the date Bids are due.** There shall be no obligation on the part of the Town to respond to questions received less than ten (10) calendar days prior to Bid opening.

7. Bid Submission

All Bids must be received by the Town of Medley, Town Attorney office located at Town Hall, 7777 N.W. 72 Avenue, Medley, Florida 33166, before the time and date specified for bid opening, enclosed in a sealed envelope, legibly marked on the outside:

BID NO.: 2011-003
BIDS FOR: Repairs for Tobie Wilson Park

Bidders must submit six (6) originals. Failure to submit six (6) originals may result in the rejection of the Bid as non-responsive.

8. Bid Guaranty

All Bids shall be accompanied by either an original Bid bond executed by a Surety meeting the requirements of the Town, or by cash, money order, certified check, cashier's check, Unconditional/Irrevocable Letter of Credit, Bid Bond Voucher (for projects less than \$200,000) issued to Town of Medley's Purchasing Department, treasurer's check or bank draft of any national or state bank (United States), in the amount of five percent 5% of the total Bid amount, payable to Town of Medley, Florida, and conditioned upon the successful Bidder executing the Contract and providing the required Performance Bond and Payment

Bond and evidence of required insurance within fifteen (15) calendar days after notification of award of the Contract. The time for execution of the Contract and provision of the Performance Bond, Payment Bond and Certificate(s) of Insurance may be extended by the Town's Capital Improvements Program at its sole discretion. Bid Securities of the unsuccessful Bidders will be returned after award of Contract. A PERSONAL CHECK OR A COMPANY CHECK OF A BIDDER SHALL NOT BE DEEMED A VALID BID SECURITY. Security of the successful Bidder shall be forfeited to the Town as liquidated damages, not as a penalty, for the cost and expense incurred should said Bidder fail to execute the Contract, and provide the required Performance Bond.

9. Preparation of Bid

The Bid Form contains one Project and the Bidder must providing a lump sum price to perform the Work required for the Project.

All Bids must be made upon the blank Town forms provided herein. The Bid must be signed and acknowledged by the Bidder in accordance with the directions on the ITB. Failure to utilize the Town's forms, or fully complete said forms will result in a determination that the Bid is non-responsive

A Bid will be considered non-responsive if it is conditioned on modifications, changes, or revisions to the terms and conditions of the ITB.

The Bid is to include the furnishing of all labor, materials, overhead expense and profit, equipment including, but not limited to, tools, services, permit fees, applicable taxes, overhead and profit for the completion of the Work except as may be otherwise expressly provided in the Contract Documents.

Joint venture firms must complete and submit with their Bid the form titled "Information for Determining Joint Venture Eligibility", (Form A) and submit a copy of the formal agreement between all joint-venture parties. This joint venture agreement must indicate their respective roles, responsibilities and levels of participation for the Project. Failure to timely submit Form A, along with an attached written copy of the joint venture agreement may result in disqualification of the Bid. All joint venture firms must meet the requirements stipulated in the Florida Statutes.

10. Postponement of Bid Opening Date

The Town reserves the right to postpone the date for receipt and opening of submissions and will make a reasonable effort to give prospective Bidders at least five (5) calendar days notice of any such postponement.

The Town shall make reasonable efforts to issue addenda within five (5) calendar days prior to the due date.

11. Acceptance or Rejection of Bids

The Town reserves the right to reject any or all Bids prior to award.

Reasonable efforts will be made to either award the Contract or reject all Bids within ninety (90) calendar days after Bid opening date. A Bidder may not withdraw its Bid unilaterally

nor change the Contract Price before the expiration of one hundred twenty (120) calendar days from the date of bid opening. A Bidder may withdraw its Bid after the expiration of one hundred twenty (120) calendar days from the date of Bid opening by delivering written notice of withdrawal to the Capital Improvements Program prior to award of the Contract by the Town Council. Once the Town Council makes the award, the Bid cannot be withdrawn under this Article.

12. Environmental Regulations

The Town reserves the right to consider a Bidder's history of citations and/or violations of environmental regulations in investigating a Bidder's responsibility, and further reserves the right to declare a Bidder not responsible if the history of violations warrant such determination in the opinion of the Town. Bidder shall submit with its Bid, a complete history of all citations and/or violations, notices and dispositions thereof. The failure to submit any such documentation shall be deemed to be an affirmation by the Bidder that there are no citations or violations. Bidders shall notify the Town immediately upon receipt of any notice of any such citation or violation which Bidder may receive after the Submittal opening date and during performance of the Work under this Contract.

13. Bid Award

The Town will issue the award of the Contract to the lowest responsive and responsible Bidder. The Town may require demonstration of competency and, at its sole discretion, conduct site visits, require the Bidder to furnish documentation and/or require the contractor to attend a meeting to determine the Bidder's qualifications and ability to meet the terms and conditions of this Contract. The Town shall consider, but not be limited to, such factors as financial capability, labor force, equipment, experience, of the trade work to be performed, the quantity of Work being performed by the Contractor and past performance on Town projects.

The Bidder must be able to demonstrate a good record of performance and have sufficient financial resources to ensure that it can satisfactorily provide the goods and/or services required herein.

The Town, in its sole discretion, may determine a Bidder to be non-responsible where the Bidder has failed to perform in accordance with any other contracts with the Town, past or current, or any other public entity or any other contract for construction services.

Any Bidder who at the time of submission is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Bidder, under federal bankruptcy law or any state insolvency, the Bidder may be declared non-responsive.

Any Bidder who has filed a lawsuit against the Town or where the Town has filed a lawsuit or won a court judgment against a Bidder, such Bidder may be declared non-responsive.

14. Collusion

Where two (2) or more related parties, as defined in this Article, each submit a response to an ITB, such submissions shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation and submission under such ITB. Related parties shall mean employees, officers or the principals thereof which have a direct or indirect ownership interest in another firm or in which a parent company or the principals thereof of one Contractor have a direct or indirect ownership interest in another Contractor for the same project(s). ITB responses found to be collusive shall be rejected.

15. Contractor in Arrears of Default

The Contractor represents and warrants that the Contractor is not in arrears to the Town and is not a defaulter as a surety or otherwise upon any obligation to the Town. In addition the contractor warrants that the Contractor has not been declared “not responsible” or “disqualified” by or debarred from doing business with any state or local government entity in the State of Florida, the Federal Government or any other State/local governmental entity in the United States of America, nor is there any proceeding pending pertaining to the Contractor’s responsibility or qualification to receive public agreements. The Contractor considers this warrant as stated in this Article to be a continual obligation and shall inform the Town of any change during the term of the Contract.

The Town shall not consider and will deem as non-responsible Bids submitted by Bidders where the Town has determined that the Bidder is in monetary arrears to the Town or otherwise in debt or default to the Town at the time and date Bids are due.

16. Cancellation of Solicitation

The Town reserves the right to cancel, in whole or in part, any solicitation when it is in the best interest of the Town. This determination will be at the discretion of the Town and there will be no recourse from such cancellation.

Section 2 – General Terms and Conditions

1. Definitions

Basis of Design means a specific manufacturer's product that is named; including the make or model number or other designation, establishing the significant qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics for purposes of evaluating comparable products of other manufacturers.

Bid means the response submitted by a bidder to this solicitation, which includes the price, authorized signature and all other information or documentation required by the Contract Documents at the time of submittal.

Bidder means any individual, firm, incorporated or unincorporated business entity, or corporation tendering a Submittal, acting directly or through a duly authorized representative.

Change Order means a written document ordering a change in the Contract Price or Contract Time or a material change in the Work. A change order must comply with the Contract Documents.

Town means the Town of Medley, Florida, a Florida municipal corporation. In all respects hereunder, Town's performance is pursuant to the Town's capacity as Owner. In the event the Town exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, codes, laws and ordinances shall be deemed to have occurred pursuant to Town's authority as a governmental body and shall not be attributable in any manner to the Town as a party to this Contract. For the purposes of this Contract, "Town" without modification shall mean the Town Mayor or Director, as applicable.

Town Council means the legislative body of the Town.

Commissioning means the employing total building commissioning practices tailored to the size and complexity of the building site, building and its system components in order to verify performance of all components and systems and help ensure that design requirements are met. This includes a designated commissioning authority a commissioning plan, verification of the installation and performance of systems to be commissioned, and a commissioning report.

Consultant means a firm that has entered into a separate agreement with the Town for the provision of design/engineering services for a Project.

Contract means the Invitation to Bid (ITB) solicitation and the Bid documents that have been executed by the Bidder and the Town subsequent to approval of award by the Town.

Contractor means the person, firm, or corporation with whom the Town has contracted and who will be responsible for the acceptable performance of any Work and for the payment of all legal debts pertaining to any Work issued under this contract through the award of an ITB.

Comment [G1]: This should be removed for horizontal projects or any bid that does not include a LEED Certification

Contract Documents means the Contract as may be amended from time to time, the plans and drawing, all addendum, clarifications, directives, change orders, payments and other such documents issued under or relating to the Project(s).

Construction Change Directive means a written directive to effect changes to the Work, issued by the Consultant or the Director that may affect the ITB Contract price or time.

Construction Schedule means a critical path schedule or other construction schedule, as defined and required by the Contract Documents.

Consultant means the Architect or Engineer of Record contracted by the Town to prepare the plans and specifications for the Projects. Consultant may also be referred to as Architect or Engineer of Record.

Cure means the action taken by the Contractor promptly after receipt of written notice from the Town of a breach of the Contract Documents which shall be performed at no cost to the Town, to repair, replace, correct, or remedy all material, equipment, or other elements of the Work or the Contract Documents affected by such breach, or to otherwise correcting any portion of the Work or the Project(s) site(s) disturbed in performing such

Cure Period means the period of time in which the Contractor is required to remedy deficiencies in the Work or compliance with the Contract Documents after receipt of written Notice to Cure from the Town identifying the deficiencies and the time to Cure.

Design Documents means the construction plans and specifications included as part of this Bid prepared by the Consultant for this Project(s) under a separate Agreement with the Town.

Director means the Director of the Capital Improvements Program or designee, who has the authority and responsibility for managing the Project(s) under this Agreement.

Drawings means the graphic and pictorial portions of the Work, which serve to show the design, location and dimensions of the Work to be performed, including, without limitation, all notes, schedules and legends on such Drawings.

Field Directive means a written approval for the Contractor to proceed with Work requested by the Town or the Consultant, which is minor in nature and typically should not involve additional cost.

Final Completion means the date subsequent to the date of Substantial Completion at which time the Contractor has completed all the Work in accordance with the Agreement as certified by the Consultant and/or the Town and submitted all documentation required by the Contract Documents.

Inspector means an authorized representative of the Town assigned to make necessary inspections of materials furnished by Contractor and of the Work performed by Contractor.

Integrated Design or IDP means the use of a collaborative, integrated planning and design process consistent with ASTM E 2348, Standard Guide for Framework for a Consensus-based Environmental Decision making Process that initiates and maintains an integrated project team in all stages of a project's planning and delivery; establishes performance goals for siting, energy, water, materials, and indoor environmental quality along with other comprehensive design goals; and, ensures incorporation of these goals throughout the design and lifecycle of the building; and considers all stages of the building's lifecycle, including deconstruction.

Materials mean goods or equipment incorporated in a Project(s), or used or consumed in the performance of the Work.

Notice of Award means the written letter to the Contractor notify the Contractor that they have been awarded the Contract.

Notice To Proceed means a written letter or directive issued by the Director or designee acknowledging that all conditions precedent have been met and directing that the Contractor may begin Work on the Project(s).

Plans and/or Drawings means the official graphic representations of a Project(s).

Project Or Work as used herein refers to all reasonably necessary and inferable construction and services required by the Contract Documents whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill its obligations, including completion of the construction in accordance with the Drawings and Specifications. The Work may constitute the whole or a part of the Project(s).

Project Manager means the individual assigned by CIP to manage the Project(s).

Request for Information (RFI) means a request from the Contractor seeking an not so worked.

Submittal means documents prepared and submitted by the Bidder to pre-qualify under this solicitation.

Substantial Completion means that point at which the Work is at a level of completion in substantial compliance with the Agreement such that the Town can use, occupy and/or operate the facility in all respects to its intended purpose. Substantial Compliance shall not be deemed to have occurred until any and all governmental entities, which regulate or have jurisdiction over the Work, have inspected, and approved the Work. Beneficial use or occupancy shall not be the sole determining factor in determining whether Substantial Completion has been achieved, unless a temporary certificate of occupancy has been issued.

2. Time is of the Essence

Contractor will promptly perform its duties under the Contract and will give the Work as much priority as is necessary to cause the Work to be completed on a timely basis in accordance with the Contract Documents. All Work shall be performed strictly (not substantially) within the time limitations necessary to maintain the critical path and all deadlines established in the Contract Documents.

All dates and periods of time set forth in the Contract Documents, including those for the commencement, prosecution, interim milestones, milestones, and completion of the Work, and for the delivery and installation of materials and equipment, were included because of their importance to the Town.

Contractor acknowledges and recognizes that the Town is entitled to full and beneficial occupancy and use of the completed Project following expiration of the Contract Time. In agreeing to bear the risk of delays for completion of the Work except for extensions approved in accordance with Article 70, Excusable Delays, the Contractor understands that, except and only to the extent provided otherwise in the Contract Documents, the

occurrence of events of delay within the Contractor's control, the Work shall not excuse the Contractor from its obligation to achieve full completion of the Work within the Contract Documents Time, and shall not entitle the Contractor to an adjustment. All parties under the control or contract with the Contractor shall include but are not limited to material men, Subcontractors, suppliers, and laborers.

The Contractor acknowledges that the Town is purchasing the right to have the Contractor continuously working at the Project(s) site(s) for the full duration of the Project(s) to ensure the timely completion of the Work.

3. Contract Term

The Contract shall commence upon issuance of the Notice of Award, which shall be issued subsequent to the execution of the Contract by the Town. The Contract shall terminate upon notice by the Town that the Contract has been closed-out after final completion or otherwise terminated by the Town pursuant to the terms and conditions herein set forth.

4. Notices

Whenever either party desires to give Written Notice unto the other relating to the Contract, such must be addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Article. Notice shall be deemed given on the date received or within three (3) days of mailing, if mailed through the United States Postal Service. Notice shall be deemed given on the date sent via e-mail or facsimile. Notice shall be deemed given via courier/delivery service upon the initial delivery date by the courier/delivery service. For the present, the parties designate the following as the respective places for giving of notice:

For Town of Medley:
Michael A. Pizzi, Town Attorney
7777 N.W. 72nd Avenue
Medley, Florida 33166

For Contractor:
(To Be Determined)

During the Work the Contractor shall maintain continuing communications with Consultant and the Project Manager. The Contractor shall keep the Town fully informed as to the progress of the Project(s) at all times through ongoing communications with the Project Manager.

5. **Priority of Provisions**

If there is a conflict or inconsistency between any term, statement requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into the Contract Documents by reference and a term, statement, requirement, the specifications and plans prepared by the Consultant, or provision of the Contract Documents the following order of precedence shall apply:

In the event of conflicts in the Contract Documents the priorities stated below shall govern;

Revisions and Change Orders to the Contract shall govern over the Contract

The Contract Documents shall govern over the Contract

Addendum to an ITB shall govern over an ITB

In the event of conflicts within the Contract Documents the priorities stated below shall govern:

Scope of Work and Specifications shall govern over plans and drawings

Schedules, when identified as such shall govern over all other portions of the plans

Specific notes shall govern over all other notes, and all other portions of the plans, unless specifically stated otherwise

Larger scale drawings shall govern over smaller scale drawings

Figured or numerical dimensions shall govern over dimensions obtained by scaling

Where provisions of codes, manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern

6. **Indemnification**

Contractor shall indemnify and hold harmless Town, its officers, agents, directors, and employees, from liabilities, damages, losses, judgments, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of Contractor and persons employed or utilized by Contractor in the performance of this Contract. These indemnifications shall survive the term of this Contract. In the event that any action or proceeding is brought against Town by reason of any such claim or demand, Contractor shall, upon written notice from Town, resist and defend such action or proceeding by counsel satisfactory to Town. The Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Town or its officers, employees, agents and instrumentalities as herein provided.

The indemnification provided above shall obligate Contractor to defend, at its own expense, to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at Town's option, any and all claims of liability and all suits and actions of every name and description which may be brought against Town whether performed by Contractor, or persons employed or utilized by Contractor.

This indemnity will survive the cancellation or expiration of the Contract. This indemnity will be interpreted under the laws of the State of Florida, including without limitation and

interpretation, which conforms to the limitations of §725.06 and/or §725.08, Fla. Statutes, as applicable.

Contractor shall require all Sub-Contractor agreements to include a provision that they will indemnify the Town.

The Contractor agrees and recognizes that the Town shall not be held liable or responsible for any claims which may result from any actions or omissions of the Contractor in which the Town participated either through review or concurrence of the Contractor's actions. In reviewing, approving or rejecting any submissions by the Contractor or other acts of the Contractor, the Town in no way assumes or shares any responsibility or liability of the Contractor or Sub-Contractor, under this Agreement.

Ten dollars (\$10) of the payments made by the Town constitute separate, distinct, and independent consideration for the granting of this Indemnification, the receipt and sufficiency of which is acknowledged by the Contractor.

7. Insurance

Without limiting any of the other obligations or liabilities of Contractor, Contractor shall provide, pay for, and maintain in force until all of its Work to be performed under this Contract has been completed and accepted by Town (or for such duration as is otherwise specified hereinafter), the insurance coverages set forth herein.

7.1. Workers' Compensation insurance is to apply for all employees in compliance with the Statutory "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy (ies) must include:

- . Waiver of subrogation
- . Statutory State of Florida
- . Limits of Liability

7.2. Employers' Liability with a limit of **One Million Dollars (\$1,000,000.00)** Dollars each bodily injury caused by an accident, each accident. **One Million Dollars (\$1,000,000.00)** Dollars each bodily injury caused by disease, each employee. **One Million Dollars (\$1,000,000.00)** Dollars each bodily injury caused by disease, policy limit.

7.3. Commercial General Liability (CGL) (Primary & Non Contributory) with minimum limits of **One Million Dollars (\$1,000,000.00)** each occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability, with a general aggregate limit of **Two Million Dollars (\$2,000,000.00)**. Coverage must be afforded on a primary and non contributory basis and with a coverage form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:
Products and/or Completed Operations for contracts with an Aggregate Limit of **One Million Dollars (\$1,000,000.00)** per project. Contractor shall maintain in force until at least three years after completion of all Work required under the Contract, coverage for Products and Completed Operations, including Broad Form Property Damage.

Personal and Advertising Injury with an aggregate limit of **One Million Dollars (\$1,000,000)**.

CGL Required Endorsements

Employees included as insured

Contingent Liability/Independent Contractors Coverage

Contractual Liability

Waver of Subrogation

Premises and/or Operations

Explosion, Collapse and Underground Hazards

Loading and Unloading

Mobile Equipment (Contractor's Equipment) whether owned, leased, borrowed or rented by Contractor or employees of the Contractor.

Town is to be expressly included as an **Additional Insured** pursuant to endorsement number CG 2010 11/85 or its equivalence.

- 7.4. Business Automobile Liability** with minimum limits of **One Million Dollars (\$1,000,000.00)** per occurrence combined single limit for Bodily Injury and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:
- Auto/All Owned Autos/Scheduled.
 - Hired, Borrowed, and Non-Owned Vehicles.
 - Employers' Non-Ownership.
 - Employees included as insured
 - Town of Medley as Additional Insured

7.5. Umbrella Policy
(Excess Following Form/True Excess Following Form/True Umbrella)

Bodily injury and property damage liability with limits of **Three Million Dollars (\$3,000,000)** each occurrence and an aggregate limit of **Three Million Dollars (\$3,000,000)**.

Excess coverage over the policies as follows:

Commercial General Liability

Business Automobile Liability

Employer's Liability

Town shall be listed as an additional insured.

7.6. Installation Floater

Required for the installation of machinery and/or equipment into an existing structure is required. The coverage shall be "All Risk" Specific Coverage Project Location coverage including installation and transit for 100 percent of the "installed replacement cost value," covering Town as a named insured, with a deductible of not more than Two Thousand Five Hundred (\$2,500.00) each claim.

7.7 Owners & Contractor's Protective

Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000

7.8 Flood Insurance

When the machinery or equipment is located within an identified special flood hazard area, flood insurance must be afforded for the lesser of the total insurable value of such buildings or structure, or, the maximum amount of flood insurance coverage available under the National Flood Program.

7.9 Builder's Risk

Causes of loss: All Risk-Specific Coverage Project Location
Valuation: Replacement Cost Deductible: \$2,500, all other Perils 5% maximum on Wind, Town of Medley included as an Additional Insured.
A. Limit/Value at Location or Site: \$4, 400,000
B. Coverage Extensions:
Materials, supplies and similar property owned by others for which you are responsible.
Full coverage up to policy limits for equipment breakdown.
Temporary storage/transit coverage.
Full coverage up to policy limits for site preparation, re-excavation, re-preparation and re-grade in the event of a loss.
Fences, scaffolding, construction forms coverage and signs
Valuable papers coverage for blueprints, site plans and similar documents.
Trees, shrubs, sod, plants while at premises.
Flood, including inundation, rain, seepage and water damage.
Earthquake
Business Interruption
Subsidence
New ordinance or law; reimbursement for any resulting loss of value to the undamaged portion, and required demolition expenses, including construction necessary to repair, rebuild or re-construct damaged parts.
Escalation clause in the event of a total loss up to 5% of policy limit.
Temporary structures, cribbing and false work built or erected at construction site.
Unintentional errors and omissions in reporting clause
Full coverage up to policy limits for testing including physical loss caused by pneumatic and hydrostatic testing.
Debris Removal.
The above policies shall provide the Town with written notice of cancellation or material change from the insurer not less than (30) days prior to any such cancellation or material change. If the initial insurance expires prior to the completion of the Work, renewal copies of policies shall be furnished at least thirty (30) days prior to the date of their expiration.
Notice of Cancellation and/or Restriction--The policy (ies) must be endorsed to provide the Town with at least thirty (30) days notice of cancellation and/or restriction.

Comment [GFab2]: Will not be required for all projects

Contractor shall furnish to the Capital Improvement Program the Certificates of Insurance or endorsements evidencing the insurance coverage specified above within fifteen (15) calendar days after notification of award of the Contract. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Contract, and state that such insurance is as required by this Contract.

The official title of the Owner is the Town of Medley, Florida. This official title shall be used in all insurance documentation.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than "A" as to management, and no less than "Class V" as to Financial Strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.

The Risk Administrator or his/her authorized designee reserves the right to require modifications, increases, or changes in the required insurance requirements, coverage, deductibles or other insurance obligations by providing a thirty (30) day written notice to the Contractor in accordance with Section 2, General Conditions, Article 4, Notices.

Contractor shall comply with such requests unless the insurance coverage is not then readily available in the national market. An additive or deductive change order will be issued to adjust the contract value as necessary. For insurance bonding issues and decisions, the Town shall act through its Risk Administrator (unless otherwise stated).

8. Performance and Payment Bond

Where required by the Contract Documents, the Contractor shall within fifteen (15) calendar days of being notified of award, furnish a Performance/Payment Bond ("Bond") containing all the provisions of the attached Performance/Payment forms.

Each Bond shall be in the amount of one hundred percent (100%) of the Contract value guaranteeing to Town the completion and performance of the Work covered in the Contract Documents as well as full payment of all suppliers, laborers, or subcontractors employed pursuant to this Project(s). Each Bond shall be with a Surety, which is qualified pursuant to Article 14, Qualification of Surety.

Each Bond shall continue in effect for one year after Final Completion and acceptance of the Work with liability equal to one hundred percent (100%) of the Contract value, or an additional bond shall be conditioned that Contractor will, upon notification by Town, correct any defective or faulty work or materials which appear within one year after Final Completion of the Project(s).

The Town must be listed as an Obligee.

Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, as amended from time to time, Contractor shall ensure that the Bond(s) referenced above shall be recorded in the public records and provide Town with evidence of such recording.

Alternate Form of Security:

In lieu of a Performance/Payment Bond, Contractor may furnish alternate forms of security, which may be in the form of cash, money order, certified check, cashier's check or unconditional letter of credit in the form attached. Such alternate forms of security shall be subject to the prior approval of Town and for same purpose and shall be subject to the same conditions as those applicable above and shall be held by Town for one year after completion and acceptance of the Work.

9. Qualification of Surety

Bid Bonds, Performance/ Payment Bonds over Five Hundred Thousand Dollars (\$500,000.00):

Each Bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years.

The Surety shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the Surety shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR Section 223.10, Section 223.111). Further, the Surety shall provide Town with evidence satisfactory to Town, that such excess risk has been protected in an acceptable manner.

The Town will accept a surety bond from a company with a rating of B+ or better for bonds up to \$2 million, provided, however, that if any surety company appears on the watch list that is published quarterly by Intercom of the Office of the Florida Insurance Commissioner, the Town shall review and either accept or reject the surety company based on the financial information available to the Town. A surety company that is rejected by the Town may be substituted by the Bidder or proposer with a surety company acceptable to the Town, only if the bid amount does not increase. The following sets forth, in general, the acceptable parameters for Bonds:

<u>Amount of Bond</u>	<u>Policy- holders</u>		<u>Financial Size</u>
	<u>Ratings</u>		<u>Category</u>
500,001 to 1,000,000	B+	Class	I
1,000,001 to 2,000,000	B+	Class	II
2,000,001 to 5,000,000	A	Class	III
5,000,001 to 10,000,000	A	Class	IV
10,000,001 to 25,000,000	A	Class	V
25,000,001 to 50,000,000	A	Class	VI
50,000,001 or more	A	Class	VII

For projects of \$500,000.00 or less, Town may accept a Bid Bond, Performance Bond and Payment Bond from a Surety which has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued, if the Surety is otherwise in compliance with the provisions of the Florida Insurance Code, and if the surety company holds a currently valid certificate of authority issued by the United States Department of the Treasury under Section 9304 to 9308 of Title 31 of the United States Code, as may be amended from time to time. A Certificate and Affidavit so certifying should be submitted with the Bid Bond and also with the Performance/Payment Bond. More stringent requirements of any grantor agency are set forth within the Bid. If there are no more stringent requirements, the provisions of this section shall apply.

10. General Requirements

The employee(s) of the Contractor shall be considered to be at all times its employee(s), and not employee(s) or agent(s) of the Town or any of its departments.

The Contractor agrees that the Contractor will at all times employ, maintain and assign to the performance of a Project a sufficient number of competent and qualified professionals and other personnel to meet the requirements of the Work to be performed.

The Contractor agrees to adjust staffing levels or to replace any staff personnel if so requested by the Project Manager, should the Project Manager make a determination that said staffing is unacceptable or that any individual is not performing in a manner consistent with the requirements for such a position.

The Contractor shall perform the work complete, in place, and ready for continuous service, and shall include repairs, testing, permits, clean-up, replacements, and restoration required as a result of damages caused during this construction.

The Contractor represents that its personnel and Subcontractors have the proper skills, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Work, in a competent and professional manner.

The Contractor shall provide temporary facilities and controls necessary to perform the Work and to ensure safe and proper access and use of the site by the Project Manager and the Consultant. The Contractor shall at all times cooperate with the Town, or the Consultant and coordinate its respective Work efforts to most effectively and efficiently progress the performance of the Work.

The Town, the Consultant and other agencies authorized by the Town, shall have full access to the Project(s) site(s) at all times.

The Contractor shall be responsible for the good condition of the Work or materials until formal release from his obligations under the terms of the Contract Documents.

All newly constructed work shall be carefully protected from injury in any way. No wheeling or walking or placing of heavy loads on it shall be allowed and the Contractor at its own expense shall reconstruct all portions damaged.

Contractor shall bear all losses incurred on account of the amount or character of the Work, or the character of the ground, being different from what he anticipated.

The Contractor shall at all times conduct the Work in such manner and in such sequence as will ensure the least practicable local interference. Contractor shall not open up Work to

the prejudice of Work already started, and the Project Manager may require the Contractor to finish a section on which Work is in progress before Work is started on any additional section.

Contractor is to take necessary precautions and use caution when working in or around overhead transmission lines and underground utilities.

Contractor is responsible to control dust and prevent it from becoming a public nuisance or causing off-site damage. Contractor shall take all necessary and prudent measure to control dust.

The apparent silence of the Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any Work to be done and materials to be furnished, shall be regarded as meaning that only best practices are to prevail and only materials and workmanship of the best quality are to be used in the performance of the Work.

11. Method of Performing the Work

The apparent silence of the Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any Work to be done and materials to be furnished, shall be regarded as meaning that only the best general practice is to prevail and that only material and workmanship of the best quality is to be used, and interpretation of the Contract Documents shall be made upon that basis.

When measurements are affected by conditions already established or where items are to be fitted into constructed conditions, it shall be the Contractor's responsibility to verify all such dimensions at the site and the actual job dimensions shall take precedence.

If the Project Manager or Consultant reasonably determines the rate of progress of the Work is not such as to ensure its completion within the designated completion time, or if, in the opinion of the Project Manager or Consultant, the Contractor is not proceeding with the Work diligently or expeditiously or is not performing all or any part of the Work according to the Project schedule accepted by or determined by the Project Manager or Consultant, the Project Manager or the Consultant shall have the right to order the Contractor to do either or both of the following: (1) improve its work force; and/or (2) improve its performance in accordance with the schedule to ensure completion of the Project(s) within the specified time. The Contractor shall immediately comply with such orders at no additional cost to the Town. (3) The Town at its sole option may also have Work performed by a third party contractor and deduct such cost from any monies due the Contractor.

Where materials are transported in the performance of the Work, vehicles shall not be loaded beyond the capacity recommended by the vehicle manufacturer or permitted by Federal, State or local law(s). When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by the Contractor and any damaged curbing, grass areas, sidewalks or other areas shall be repaired at the expense of the Contractor to the satisfaction of the Project Manager or Consultant.

The Contractor shall furnish to the Project Manager and the Consultant a complete listing of 24-hour telephone numbers at which responsible representatives of the Contractor and all of the Contractor's Subcontractor can be reached should the need arise at any time.

12. Work Staging and Phasing

The Work to be performed shall be done in such a manner so as not to interfere with the normal Town operations of the Project site or facility. The manner in which the Work is performed shall be subject to the approval of the Project Manager or Consultant, whom if necessary, shall have the authority to require changes in the manner in which the Work is performed. There shall be no obstruction of Town services without the prior written approval of the Project Manager or Consultant. All requests for such interruption or obstruction must be given in writing to the Project Manager or Consultant 24 hours in advance of the interruption of Town operations.

The Contractor shall familiarize itself with normal Town operations where the Work is to be performed so that it can conduct the Work in the best possible manner to the complete satisfaction of the Project Manager and Consultant.

A staging plan must be submitted to and approved by the Project Manager or the Consultant prior to the start of construction and issuance of the Notice to Proceed. Such staging plan shall be revised and resubmitted as necessary during construction.

13. Site Investigation and Representation

The Contractor acknowledges that it has satisfied itself as to the nature and location(s) of the Work under the Contract Documents, the general and local conditions, particularly those bearing upon availability of transportation, disposal, handling and storage of materials, availability of labor, water, electric power, and roads, the conformation and conditions at the ground based on Town provided reports, the type of equipment and facilities needed preliminary to and during the performance of the Work and all other matters which can in any way affect the Work or the cost thereof under the Contract Documents.

The Contractor further acknowledges that it has satisfied itself based on any geotechnical reports the Town may provide and inspection of the Project(s) site(s) as to the character, quality, and quantity of surface and subsurface materials to be encountered from inspecting the site and from evaluating information derived from exploratory work that may have been done by the Town or included in this Contract Documents.

Contractor should examine the soil conditions at the Project site to determine if any special shoring, sheeting, or other procedures necessary to protect adjacent property during excavation of subsoil materials or during filling of any area(s), or for any operation that may be required during the performance of the Work.

Any failure by the Contractor to acquaint itself with all the provided information and information obtained by visiting the Project(s) site(s) will not relieve Contractor from responsibility for properly estimating the difficulty or cost thereof under the Contract Documents. In the event that the actual subsurface conditions vary from the actual Town provided reports the Contractor shall notify the Town and this Contract Documents amount may be adjusted up or down depending on the conditions.

14. Contractor to Check Plans, Specifications and Data

Contractor shall verify all dimensions, quantities and details shown on the plans, specifications or other data received from Project Manager or Consultant as part of a Contract Documents, and shall notify the Project Manager and the Consultant of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery. Contractor will not be allowed to take advantage of any error, omission or discrepancy, as full instructions will be furnished the Project Manager or by Consultant. Contractor shall not be liable for damages resulting from errors, omissions or discrepancies in the Contract Documents unless Contractor recognized such error, omission or discrepancy and knowingly failed to report it to Project Manager or Consultant.

15. Contractor's Responsibility for Damages and Accidents

Contractor shall accept full responsibility for Work against all losses or damages of whatever nature sustained until Final Acceptance by Town, and shall promptly repair or replace, at no additional cost to the Town any Work, materials, equipment, or supplies damaged, lost, stolen, or destroyed from any cause whatsoever.

Contractor shall accept full responsibility for Work against all losses or damages of whatever nature sustained until Final Acceptance by Town, and shall promptly repair or replace, at no additional cost to the Town, and to the satisfaction of the Project Manager, any Work, materials, equipment, or supplies damaged, lost, stolen, or destroyed from any cause whatsoever.

Lawn Areas - All lawn areas disturbed by construction shall be replaced with like kind to a condition similar or equal to that existing before construction. Where sod is to be removed, it shall be carefully removed, and the same re-sodded, or the area where sod has been removed shall be restored with new sod in the manner described in the applicable section.

Fences - Any fence, or part thereof, that is damaged or removed during the course of the work shall be replaced or repaired by the Contractor, and shall be left in as good a condition as before the starting of the work.

Where fencing, walls, shrubbery, grass strips or area must be removed or destroyed incident to the construction operation, the Contractor shall, after completion of the work, replace or restore to the original condition all such destroyed or damaged landscaping and improvements.

16. Accidents

The Contractor shall provide such equipment and facilities as are necessary or required, in the case of accidents, for first aid service to person who may be injured during the Project(s) duration. The Contractor shall also comply with the OSHA requirements as defined in the United States Labor Code 29 CFR 1926.50.

In addition, the Contractor must report immediately to the Project Manager and Consultant every accident to persons or damage to property, and shall furnish in writing full information, including testimony of witnesses regarding any and all accidents.

17. Safety Precautions

Contractor shall be solely 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:

All employees on the Project(s) site(s) and other persons who may be affected thereby;

All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Project(s) site(s); and

Other property at the Project(s) Site(s) or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

Contractor shall designate a responsible member of its organization at the Project(s) site(s) whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Project Manager.

Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders 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 owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property caused directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by 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 Project Manager or Consultant has issued the Contractor a notice of Final Acceptance.

Contractor must adhere to the applicable environmental protection guidelines for the duration of a Project. If hazardous waste materials are used, detected or generated at any time, the Project Manager must be immediately notified of each and every occurrence. The Contractor shall comply with all codes, ordinances, rules, orders and other legal requirements of public authorities (including OSHA, EPA, DERM, the Town, Miami-Dade County, State of Florida, and Florida Building Code), which bear on the performance of the Work.

The Contractor shall take the responsibility to ensure that all Work is performed using adequate safeguards, including but not limited to: proper safe rigging, safety nets, fencing, scaffolding, barricades, chain link fencing, railings, barricades, steel plates, safety lights, and ladders that are necessary for the protection of its employees, as well as the public and Town employees. All riggings and scaffolding shall be constructed with good sound materials, of adequate dimensions for their intended use, and substantially braced, tied or

secured to ensure absolute safety for those required to use it, as well as those in the vicinity. All riggings, scaffolding, platforms, equipment guards, trenching, shoring, ladders and similar actions or equipment shall be OSHA approved, as applicable, and in accordance with all federal state and local regulations.

All open trenches or holes shall be properly marked and barricaded to assure the safety of both vehicular and pedestrian traffic. No open trenches or holes are to be left open during nighttime or non-working hours without the prior written approval of the Project Manager. If an emergency condition should develop during a Project, the Contractor must immediately notify the Project Manager and Consultant of each and every occurrence. The Contractor should also recommend any appropriate course(s) of action to the Project Manager and the Consultant.

18. Occupational Health and Safety

In compliance with Chapter 442, Florida Statutes, any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of a Project must be accompanied by a Material Safety Data Sheet (MSDS) which may be obtained from the manufacturer. The MSDS must include the following information:

The chemical name and the common name of the substance.

The hazards or other risks in the use of the substance, including:

The potential for fire, explosion, corrosion, and reaction;

The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the substance; and the primary routes of entry and symptoms of overexposure.

The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the substances, including appropriate emergency treatment in case of overexposure.

The emergency procedure for spills, fire, disposal, and first aid.

A description in lay terms of the known specific potential health risks posed by the substance intended to alert any person reading this information.

The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

19. Labor and Materials

Unless otherwise provided herein, Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

Contractor shall at all times enforce strict discipline and good order among its employees and Subcontractors at the Project(s) site(s) and shall not employ on the Project(s) any unfit person or anyone not skilled in the Work to which they are assigned.

20. Rules, Regulations, and Licenses

The successful Contractor shall comply with all laws and regulations applicable to provision of services specified in the Contract Documents. The Contractor shall be familiar with all federal, state and local laws that may in affect the goods and/or services offered.

21. Consultant Services

The Town, at its sole discretion may hire a Consultant who shall serve as the Town's Representative for the Project(s) to be performed under the Contract Documents. The Contract Documents will state that an Town's representative has been contracted with for the management of the Work under the Contract Documents and who will be the lead point of contact, the Consultant or the Project Manager. Where a Consultant has been identified, the Consultant and the Project Manager will have authority to act on behalf of the Town to the extent provided in the Contract Documents and as outlined in Article 22, Authority of the Project Manager, of the General Terms and Conditions.

On the basis of the on-site observations, the Consultant will keep the Project Manager informed of the progress of the Work. In the capacity of interpreter, the Consultant will exercise the best efforts to ensure faithful performance by both the Project Manager and the Contractor and will not show partiality to either.

The Project Manager will assist the Consultant in conducting inspections to determine the date or dates of Substantial Completion and Final Acceptance and will receive and review written warranties and related documents required by the Contract and the Contract Documents. The Consultant will be responsible for receiving all documentation for review and acceptance. Upon acceptance such documentation will be forwarded to the Project Manager. The Project Manager in conjunction with the Consultant will approve Schedules of Values, Project Schedules, Subcontractors and invoices.

The Town may contract for additional consultant services, including but not limited to construction examination and observation services. Such services are intended to be additional services and are not intended to and shall not be construed to supplant or alter the role and responsibilities of the Consultant.

In case of the termination of employment of the Consultant, the Town may, at its sole discretion, appoint another Consultant, whose status under the Contract shall be as that of the former Consultant.

22. Project Management

Where a Contractor is awarded Work, the Contractor shall be responsible for all Project management, including any and all subcontracts necessary to ensure that the Work is performed in accordance with the Contract Documents. Project Management shall include, but is not limited to: obtaining bids from Subcontractors and suppliers; coordinating the securing of all permits; obtaining licenses and inspections; ensuring that Subcontractors comply with all Town requirements; performing the Work in accordance with the Contract Documents to the satisfaction of the Project Manager; paying all Subcontractors; obtaining

release of liens/claims fees; and obtaining temporary and final Certificates of Occupancy or Completion.

23. Superintendence and Supervision

The orders of the Town are given through Consultant or Project Manager, which instructions are to be strictly and promptly followed in every case. Contractor shall keep on the Project during its progress, a full-time competent English speaking superintendent and any necessary assistants, all satisfactory to Project Manager or Consultant. The superintendent shall not be changed except with the written consent of Project Manager or Consultant, unless the superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ. The superintendent shall represent Contractor and all directions given to the superintendent shall be as binding as if given to Contractor and will be confirmed in writing by Project Manager or Consultant upon the written request of Contractor. Contractor shall give efficient supervision to the Work, using its best skill and attention. The Project Manager and the Consultant shall be provided telephone number(s) for the superintendent where the superintendent can be contacted during normal working hours as well as after hours for emergencies.

On Projects in excess on thirty (30) calendar days the Contractor's superintendent shall record, at a minimum, the following information in a bound log: the day; date; weather conditions and how any weather condition affected progress of the Work; time of commencement of Work for the day; the Work being performed; materials, labor, personnel, equipment and Subcontractors at the Project(s) site(s); visitors to the Project site, including representatives of the Town, Consultant, regulatory representatives; any special or unusual conditions or occurrences encountered; and the time of termination of Work for the day. All information shall be recorded in the daily log in indelible ink. The daily log shall be kept on the Project(s) site(s) and shall be available at all times for inspection and copying by Project Manager and Consultant.

The Project Manager, Contractor and Consultant shall meet at least every two (2) weeks or as otherwise determined by the Project Manager, during the course of the Work to review and agree upon the Work performed and outstanding issues. The Contractor shall publish, keep, and distribute minutes and any comments thereto of each such meeting.

If Contractor, in the course of performing the Work, finds any discrepancy between the Contract Documents and the physical conditions of the locality, or any errors, omissions, or discrepancies in the Plans, it shall be Contractor's duty to immediately inform Project Manager and Consultant, in writing, and Project Manager or Consultant, will promptly review the same. Any Work done after such discovery, until authorized, will be done at Contractor's sole risk.

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 and Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction.

All Work, including trade Work shall be performed and supervised by properly licensed for the Work being performed.

24. Subcontractors

Contractor is solely responsible for all acts and omissions of its Subcontractors Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor and the Town. Contractor is responsible for the timely payment of its Subcontractors and suppliers as required by Florida Statute. Failure to comply with these payment requirements will place the Contractor in default of the Contract. Contractor shall not employ any subcontractor against whom Town and or Program Manager may have a reasonable objection. Contractor shall not be required to employ any subcontractor against whom Contractor has a reasonable objection. Contractor shall utilize the Subcontractors identified in its Bid submission. The replacement, addition, or deletion of any Subcontractor(s) shall be subject to the prior written approval of the Project Manager. With the submission of its pay application the Contractor must identify the number of personnel they and the Subcontractor(s) are using who are working under H2B visas. Third tier subcontracting is only permitted with the prior written approval of the Project Manager.

25. Authority of the Project Manager

The Director hereby authorizes the Project Manager and the Consultant designated in the Contract Documents to determine, all questions of any nature whatsoever arising out of, under or in connection with, or in any way relating to or on account of the Work, and questions as to the interpretation of the Work to be performed under this Contract Documents. The Contractor shall be bound by all determinations or orders of the Project Manager and/or Consultant and shall promptly respond to requests of the Project Manager and/or Consultant, including the withdrawal or modification of any previous order, and regardless of whether the Contractor agrees with the Project Manager's and/or Consultant's determination or requests. Where requests are made orally, the Project Manager and/or Consultant will follow up in writing, as soon thereafter as is practicable. The Project Manager and/or Consultant shall have authority to act on behalf of the Town to the extent provided by the Contract Documents, unless otherwise modified in writing by the Town. All instructions to the Contractor shall be issued in writing. All instructions to the Contractor shall be issued through the Director, Project Manager or the Consultant. The Project Manager and/or Consultant shall have access to the Project(s) Site(s) at all times. The Contractor shall provide safe facilities for such access so the Project Manager and Consultant may perform their functions under the Contract. The Project Manager and Consultant will make periodic visits to the Work Site to become generally familiar with the progress and quality of the Work, and to determine if the Work is proceeding in accordance with the Contract Documents.

The Project Manager and Consultant will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

The Project Manager and Consultant will have authority to reject Work that does not conform to the Contract Documents. Whenever, in his or her opinion, it is considered necessary or advisable to ensure the proper completion of the Contract Documents the Project Manager and Consultant will have authority to require special inspections or testing of the Work, whether or not such Work is fabricated, installed or completed. Neither the Project Manager's nor Consultant's authority to act under this paragraph, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Project Manager or Consultant to the Contractor, any subcontractor, supplier or any of their agents, employees, or any other person performing any of the Work.

All interpretations and recommendations of the Project Manager and Consultant shall be consistent with the intent of the Contract Documents.

The Project Manager and Consultant will not be responsible for the acts or omissions of the Contractor, any Subcontractor, or any of their agents or employees, or any other persons performing any of the Work.

26. Inspection of Work

The Project Manager, Consultant, Inspectors, and other Town representatives shall at all times have access to the Work during normal work hours, and Contractor shall provide proper facilities for such access and for inspecting, measuring and testing.

Should the Contract Documents, Consultant/Inspector Project Manager's instructions, any laws, ordinances, or any public authority require any of the Work to be specially tested or approved, Contractor shall give Project Manager and Consultant timely notice of readiness of the Work for testing. If the testing or approval is to be made by an authority other than a Town of contracted firm, timely notice shall be given of the date fixed for such testing.

Testing shall be made promptly, and, where practicable, at the source of supply. If any of the Work should be covered up without approval or consent of Project Manager or Consultant, it must, if required by the Project Manager and/or Consultant, be uncovered for examination and properly restored at Contractor's expense.

Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals. The Contractor shall give the Town and the Consultant timely notice of when and where tests and inspections are to be made so that the Town and Consultant may be present for such procedures. All testing reports are to be sent directly to the Project Manager by the testing firm, with a copy to the Contractor.

Re-examination of any of the Work may be ordered by the Project Manager and Consultant, and if so ordered, the Work must be uncovered by Contractor. If such Work is found to be in accordance with the Contract Documents, Town shall pay the cost of reexamination and replacement by means of a Change Order. If such Work is not in accordance with the Contract Documents, Contractor shall pay such cost.

The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Town or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

Inspectors shall have no authority to permit deviations from, or to relax any of the provisions of the Contract Documents or to delay the Work by failure to inspect the materials and Work with reasonable promptness without the written permission or instruction of Project Manager and Consultant.

The payment of any compensation, whatever may be its character or form, or the giving of any gratuity or the granting of any favor by the Contractor to any Inspector, directly or indirectly, is strictly prohibited, and any such act on the part of the Contractor will constitute a breach of this Contract.

27. Taxes

Contractor shall pay all applicable sales, consumer, use and other taxes required by law. Contractor is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.

28. Separate Contracts

Prior to the commencement of the Work the Project Manager will notify the Contractor of all ongoing projects or projects scheduled to commence during the Work that may require coordination. The Contractor shall be responsible for coordinating the Work with any other project to minimize any potential adverse impact. Contractor shall not be entitled to any days of delay for failure to properly coordinate the Work. The Consultant and the Project Manager will assist the Contractor in coordinating the Work. However, the sole responsibility for coordination rests with the Contractor.

If any part of Contractor's Work depends for proper execution or results upon the work of any other persons, Contractor shall inspect and promptly report to Project Manager and Consultant any defects in such work that render it unsuitable for such proper execution and results. Contractor's failure to so inspect and report shall constitute an acceptance of the other person's work as fit and proper for the reception of Contractor's Work, except as to defects which may develop in other contractor's work after the execution of Contractor's Work.

Contractor shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on any other contractor on the site. Should such interference or impact occur, Contractor shall be liable to the affected contractor for the cost of such interference or impact.

To ensure the proper execution of subsequent Work, Contractor shall inspect the Work already in place and shall at once report to Project Manager and Consultant any discrepancy between the executed Work and the requirements of the Contract Documents.

29. Lands of Work

Town shall provide, as may be 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 as are designated by Town for the use of Contractor.

Contractor shall provide, at Contractor's own expense and without liability to Town, any additional land and access thereto that may be required for temporary construction facilities, or for storage of materials. Contractor shall furnish to Town copies of written permission obtained by Contractor from the owners of such facilities.

30. Coordination of Work

The Project Site(s) may be occupied and may operate on a twenty-four hour seven day a week schedule. Contractor shall ensure that the performance of the Work does not impact any ongoing operations at Project(s) site(s), which also includes the delivery of any materials and equipment. Access to and egress from the Project Site(s) shall be coordinated with the Project Manager and the Consultant to minimize interference to regular and emergency operations of the facility.

During progress of Work under this Contract, it may be necessary for other contractor's and persons employed by the Town to Work in or about the Project. The Town reserves the right to put such other contractors to work and to afford such access to the Project site of the Work to be performed hereunder at such times as the Town deems proper.

If this Contract requires a portion of the Work to be tied into work done under another Contractor(s), it will be necessary for Contractor to plan its Work and cooperate with other contractors insofar as possible to prevent any interference and delay.

The Contractor is required to coordinate the Work with other contractors performing work at the Project(s) site. The Contractor shall not impede or interfere with the work of other contractors engaged in or about the Work and shall so arrange and conduct its Work that such other contractors may complete their work at the earliest date possible.

31. Differing Site Conditions

In the event that during the course of the Work Contractor encounters subsurface or concealed conditions at the Project(s) site(s) which differ materially from those shown in the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents; or unknown physical conditions of the Project(s) site(s), of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents, Contractor, without disturbing the conditions and before performing any Work affected by such conditions, shall, within twenty-four (24) hours of their discovery, notify the Project Manager and Consultant in writing of the existence of the aforesaid conditions. Project Manager and the Consultant shall, within two (2) business days after receipt of Contractor's written notice, investigate the site conditions identified by Contractor. If, in the sole opinion of Project Manager or the Consultant, the conditions do materially so differ and cause an increase or decrease in

Contractor's cost of, or the time required for, the performance of any part of the Work, whether or not charged as a result of the conditions, Project Manager or Consultant shall recommend an equitable adjustment to the Contract Documents Price or Contract Documents Time, or both. If the Project Manager and Contractor cannot agree on an adjustment in the Contract Price or Contract Time, the adjustment shall be referred to the Director for determination. Should the Director determine that the conditions of the Project(s) site(s) are not so materially different to justify a change in the terms of the Contract Documents, the Director shall so notify the Project Manager, Consultant, and Contractor in writing, stating the reasons, and such determination shall be final and binding upon the parties hereto.

No request by Contractor for an equitable adjustment to the Contract Documents under this provision shall be allowed unless Contractor has given written notice in strict accordance with the provisions of this Article. No request for an equitable adjustment or change to the Contract price or Contract Time for differing site conditions shall be allowed if made after the date certified by Consultant or Project Manager as the date of substantial completion.

32. Existing Utilities

Known utilities and structures adjacent to or encountered in the Work may be shown on the Drawings. Locations shown are taken from existing records and the best information available from existing plans and utility investigations; however, it is expected that there may be some discrepancies and omissions in the locations and quantities of utilities and structures shown. Those shown are for the convenience of the Contractor only, and no responsibility is assumed by either the Town for their accuracy or completeness. No request for additional compensation or contract time resulting from encountering utilities not shown will be considered. The Contractor shall explore sufficiently ahead of the Work to allow time for any necessary adjustments. The Contractor must coordinate all underground utility locations through "Sunshine State One Call of Florida, Inc", who shall be contacted a minimum of 48 hours before the Contractor commences any digging.

33. Contractor's Responsibility for Utility Properties and Service

Where the Contractor's operations could cause damage or inconvenience to railway, telephone, fiber optic, television, electrical power, oil, gas, water, sewer, or irrigation systems, the Contractor shall make all arrangements necessary for the protection of these utilities and services or any other known utilities.

Notify all utility companies that are affected by the construction operation at least 48 hours in advance. Under no circumstance expose any utility without first obtaining permission from the appropriate agency. Once permission has been granted, locate, expose, and provide temporary support for all existing underground utilities and utility poles where necessary.

The Contractor and his Subcontractors shall be solely and directly responsible to the owner and operators of such properties for any damage, injury, expense, loss, inconvenience,

delay, suits, actions, or claims of any character brought because of any injuries or damage which may result from the construction operations under the Contract Documents. Neither the Town nor its officers or agents shall be responsible to the Contractor for damages as a result of the Contractor's failure to protect utilities encountered in the Work. In the event of interruption to domestic water, sewer, storm drain, or other utility services as a result of accidental breakage due to construction operations, promptly notify the proper authority. Cooperate with said authority in restoration of service as promptly as possible and bear all costs of repair. In no event shall interruption of any utility service be allowed unless granted by the owner of the utility. In the event water service lines that interfere with trenching are encountered, the Contractor may, by obtaining prior approval of the water utility, cut the service, dig through, and restore the service with similar and equal materials at the Contractor's expense and as approved by the Project Manager or Consultant. Replace, with material approved by the Project Manager or Consultant, at Contractor's expense, any and all other laterals, existing utilities or structures removed or damaged during construction, unless otherwise provided for in the Contract Documents and as approved by the Project Manager or Consultant. Replace with material approved by the Project Manager or Consultant, at Contractor's expense, any existing utilities damaged during the Work.

34. Interfering Structures

An attempt has been made to show major structures on the furnished Drawings. While the information has been compiled from the best available sources, its completeness and accuracy cannot be guaranteed, and is presented as a guide. The Contractor shall field verify all locations. Contractor shall coordinate with any affected companies, including utility companies and take necessary precautions to prevent damage to existing structures whether on the surface, above ground, or underground, including have the owner of the interfering structures place temporary supports.

35. Field Relocation

During the process of the Work, it is expected that minor relocations of the Work may be necessary. Such relocations shall be made only by the direction of the Project Manager and Consultant at the Contractor's expense. If existing structures are encountered that will prevent construction as shown, the Contractor shall notify the Project Manager or Consultant before continuing with the Work in order that the Project Manager or Consultant may make such field revisions as necessary to avoid conflict with the existing structures. Where the Contractor fails to notify the Project Manager or Consultant when an existing structure is encountered, and proceeds with the Work despite this interference, the Contractor does so at his own risk.

36. Contractor's Use of Project Site(s)

Limitations may be placed on the Contractor's use of the Project(s) site(s) and such limitations will be identified by the Project Manager. In addition to such limitations, the Project Manager may make storage available to the Contractor at his sole discretion based on availability of space. The Contractor shall also coordinate and schedule deliveries so as to minimize disruptions to Town day-to-day operations.

The Contractor shall limit its use of the Project site(s), so as to allow for the Town's continuous operation. This is necessary, as the Project Site(s) may remain in operation during the Work.

The Contractor shall:

Confine operations at the Project(s) site(s) to the areas permitted by the Project Manager or Consultant; not disturb portions of the Project(s) site(s) beyond the specified areas; conform to Project(s) site(s) rules and regulations affecting the Work.

Keep existing driveways and entrances serving surrounding facilities clear and available to the Town, its employees and the public at all times; not use areas for parking and/or storage of materials except as authorized by the Project Manager.

Assume all responsibility for its tools, equipment and materials, including any materials purchased for the Work and not accepted by the Town, and its vehicles while performing Work for the Town and/or while parked or stored at a Town facility. The Town assumes no liability for damage or loss to the items specified in this paragraph.

Access to parking and egress from the Project(s) site(s) shall be subject to the approval of the Project Manager.

37 Warranty of Materials and Equipment

Contractor warrants to Town that all materials and equipment furnished under the Contract Documents will be new unless otherwise specified and that all of the Work will be of good quality, free from faults and defects and in conformance with the Contract Documents and Contract/Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Project Manager or Consultant, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by any other provisions within the Contract Documents.

38. Material and Equipment Shipment, Handling, Storage and Protection

Preparation for Shipment

When practical, equipment shall be factory assembled. The equipment parts and assemblies that are shipped unassembled shall be furnished with assembly plan and instructions. The separate parts and assemblies shall be factory match-marked or tagged in a manner to facilitate assembly. All assemblies are to be made by the Contractor at no additional cost to the Town.

Generally, machined and unpainted parts subject to damage by the elements shall be protected with an application of a strippable protective coating, or other approved protective method.

Equipment shall be packaged or crated in a manner that will provide protection from damage during shipping, handling, and storage.

The outside of the package or crate shall be adequately marked or tagged to indicate its contents by name and equipment number, if applicable; approximate weight; state any special precautions for handling; and indicate the recommended requirements for storage prior to installation.

Packaging and Delivery of Spare Parts and Special Tools

Properly mark to identify the associated equipment by name, equipment, and part number. Parts shall be packaged in a manner for protection against damage from the elements during shipping, handling, and storage. Ship in boxes that are marked to indicate the contents. Delivery of spare parts and special tools shall be made prior to the time associated equipment is scheduled for the initial test run.

Shipment

All equipment and material shall be shipped with freight and shipping paid, FOB job site. The Contractor shall request a 7-day advance notice of shipment from manufacturers, and, upon receipt of such notice, provide the Engineer with a copy of the current delivery information concerning equipment items and material items of critical importance to the Project schedule.

Receiving

The Contractor shall unload and record the receipt of all equipment and materials at the jobsite. All costs for receiving, inspection, handling, storage, insurance, inventory control, and equipment maintenance for the Contractor-supplied and Town-supplied materials and equipment shall be included in the prices Bid and no extra compensation will be allowed.

Inspection

Immediately upon receipt of equipment and materials at the jobsite, the Contractor shall inspect for completeness and any evidence of damage during shipment. Town supplied equipment and material shall be inspected and inventoried together with Town's Inspector. Should there appear to be any shortage or damage, the Project Manager or Consultant shall be immediately notified; and the Contractor shall be fully responsible for informing the manufacturers and the transportation company of the extent of the shortage or damage. If the item or items require replacing or supplying missing parts, the Contractor shall take the necessary measures to expedite the replacement or supply the missing parts.

Handling

Equipment and materials received for installation on the Project(s) shall be handled in accordance with the manufacturer's recommendations, and in a manner that will prevent damage.

Storage

Equipment and materials shall be stored prior to installation as recommended by the manufacturer. Generally, materials such as pipe shall be stored off the ground in approved storage yards. Items subject to damage by the elements, vandalism, or theft shall be stored in secure buildings. Items requiring environmental control for protection shall be provided with the necessary environmentally controlled storage facilities at no cost to the Town.

Insurance

The Contractor's insurance shall adequately cover the value of materials delivered but not yet incorporated into the Work.

Inventory Control

Equipment and materials shall be stored in a manner to provide easy access for inspection and inventory control. The Contractor shall keep a running account of all materials in storage to facilitate inspection and to estimate progress payments for materials delivered but not installed in the Work.

Equipment's Maintenance Prior to Acceptance by the Town

The contractor shall provide the required or manufacturer's recommended maintenance during storage, during the installation, and until such time as the Town accepts the equipment for full-time operation.

Salvage Equipment

Any salvageable pipe, fittings, or other miscellaneous material or equipment removed during construction and not reused in the Work shall be cleaned, hauled, and stored by the Contractor at his own expense, where directed by the Project Manager or Consultant, and shall remain the property of the Town. All other material shall be disposed of by the Contractor at his own expense.

39. Manufacturer's Instructions

The Contractor shall:

Comply with manufacturer's requirements for the handling, delivery and storage of all materials. Where required by the Contract Documents, Contractor shall submit manufacturer's printed instructions for delivery, storage, assembly, and installation. Comply with the manufacturer's applicable instructions and recommendations for the performance of the Work, to the extent that these instructions and recommendations are more explicit or more stringent than requirements indicated in the Contract Documents including the Contract Documents.

Inspect each item of material or equipment immediately prior to installation and reject damaged and defective items.

Provide attachment and connection devices and methods for securing the Work; secure Work true to line plumb and level, and within recognized industry standards; allow for expansion and building movement; provide uniform joint width in exposed Work; arrange joints in exposed Work to obtain the best visual effect and refer questionable visual effect choices to the Consultant for final decision when applicable to the Work.

Recheck measurements and dimensions of the Work, as an integral step in starting each portion of the Work.

Install each unit or section of Work during favorable weather conditions, which shall ensure the best possible results in coordination with the entire Project(s) and isolate each unit of Work from incompatible Work as necessary to prevent potential interference among each section and/or deterioration of equipment.

Coordinate enclosure of the Work, which requires inspections and tests so as to minimize the necessity of uncovering Work for that purpose.

When required by the Contract Documents or the manufacturer, a qualified representative shall be present to observe field conditions, conditions of surface and installation, quality of workmanship, and applications. Manufacturer's representative shall provide the Contractor and the Project Manager or Consultant a written report of field observations.

40. Manufacturer's Warranty

Contractor shall provide all manufacturers' warranties. All warranties, expressed and/or implied, shall be made available to the Town for material and equipment covered by this Contract Documents. All material and equipment furnished shall be fully guaranteed by the Contractor against factory defects and workmanship. At no expense to the Town, the Contractor shall correct any and all apparent and latent defects that may occur within the manufacturer's standard warranty. The Contract Documents may supersede the manufacturer's standard warranty. Manufacturer's warranties will become effective upon Final Acceptance of the Project(s).

41. Reference Standards

Reference to the standards of any technical society, organization or body shall be construed to mean the latest standard adopted and published at the date of request for qualifications, even though reference may have been made to an earlier standard. Such reference is hereby made a part of the Contract Documents the same as if herein repeated in full and in the event of any conflict between any of these standards and those specified, the most stringent shall govern unless otherwise stated.

42. Submittals

Contractor shall check and approve all shop drawing, samples, product data, schedule of values, and any and all other Submittals to make sure they comply with the Contract Documents prior to submission to the Project Manager and Consultant.

Contractor by approving and submitting any Submittals, represents that they have verified the accuracy of the Submittals, and they have verified all of the Submittal information and documentation with the requirements of the Contract Documents. At time of submission the Contractor shall advise the Project Manager and Consultant in writing of any deviations from the Contract Documents. Failure of the Contractor to advise the Project Manager or Consultant of any deviations shall make the Contractor solely responsible for any costs incurred to correct, add or modify any portion of the Work to comply with the Contract Documents.

Each Submittal shall contain a title block containing the following information:

Number and title of drawing, including Contract title and Number

Date of drawing and revisions

Name of Contractor and Subcontractor (if any) submitting drawings

Name of Project, Building or Facility, and Owner's Project number

Specification Section title and number

Contractor's Stamp of approval, signed by the Contractor or his checker

Space above the title block for Project Manager' or Consultant's action stamp

Submittal or re-submittal number (whether first, second, third, etc.)

Date of submittal

Contractor shall sign, in the proper block, each sheet of shop drawing and data and each sample label to certify compliance with the requirements of the Contract Documents.

Submittals submitted without the stamp and signature shall be rejected and it will be considered that the Contractor has not complied with the requirements of the Contract Documents. Contractor shall bear the risk of any delays that may occur as a result of such rejection.

Town shall not be liable for any materials, fabrication of products or Work commenced that requires submittals until the Project Manager and/or Consultant has returned approved submittals to the Contractor.

Contractor shall submit six (6) originals of each Submittal to the Town. The Town will return three marked/reviewed sets to the Contractor. A Contractor's letter of transmittal cover sheet must be attached to all Submittals' packages being transmitted to the Town and Consultant. The Contractor's letters of transmittal shall properly list and identify all Submittal packages with number and description of each Submittal within the letter of transmittal.

When catalogs, product data, diagrams or charts are submitted with more than one type of product manufactured, clearly identify the particular item being submitted, including options that are intended for use in that particular work or portion of work.

Contractor shall note in submittals/shop drawings to make references to Drawings, drawings details, Specifications Sections, or any of the Contract Documents, as necessary for clarity.

Project Manager and/or Consultant shall make every effort to review Submittals within fourteen (14) calendar days from the date of receipt by the Project Manager and/or Consultant. Project Manager and/or Consultant's review shall only be for conformance with design concepts and the information provided in the Contract Documents. The approval of a separate item shall not constitute approval of an assembly in which the item functions. The Project Manager and/or Consultant shall return the reviewed Submittal to the Contractor for their use and distribution.

Acceptance of any submittal by the Town Clerk shall not relieve the Contractor of any responsibility for any deviations from the requirements of the Contract Documents unless the Contractor has given written notice to the Project Manager and/or Consultant of the specific deviations and the Consultant has issued written approval of such deviations.

By approving and submitting shop drawings, product data and samples, the Contractor represents that all materials, field measurements and field construction criteria related thereto have been verified, checked and coordinated with the requirements of the Work and have been verified, checked and coordinated with this Contract Documents.

Contractor shall be responsible for the distribution of all shop drawings, copies of product data and samples, which bear the Project Manager's or Consultant's stamp of approval. Distribution shall include, but not limited to; job site file, record documents file, Subcontractor, suppliers, and other affected parties or entities that require the information. The Contractor shall also provide copies of all plans approved and permitted by the required governing authorities.

The Contractor shall not be relieved of responsibility for errors or omissions in any and all submittals by the Project Manager's or Consultant's acceptance thereof. The Contractor warrants the adequacy for the purpose intended of any shop drawings or portion of a Submittal that alters, modifies or adds to the requirements of the Contract Documents. Nothing in the Project Manager's or Consultant's review of Submittals shall be construed as authorizing additional work or increased cost to the Town.

43. Shop Drawings

Contractor shall submit Shop Drawings as required by the Contract Documents. The purpose of the Shop Drawings is to show, in detail, the suitability, efficiency, technique of manufacture, installation requirements, details of the item, and evidence of its compliance or noncompliance with this Contract Documents.

Within five (5) calendar days after Town's award of the Contract, Contractor shall submit to Project Manager or Consultant a complete list and submittal log of items for which Shop Drawings are to be submitted and shall identify the critical items and all submittal dates.

Approval of this list by Project Manager or Consultant shall in no way relieve the Contractor from submitting complete Shop Drawings and providing materials, equipment, etc., fully in accordance with the Contract Documents. This procedure is required in order to expedite final approval of Shop Drawings.

After the approval of the list of items required in above, Contractor shall promptly request Shop Drawings from the various manufacturers, fabricators, and suppliers.

Contractor shall thoroughly review and check the Shop Drawings and each and every copy shall show its approval thereon. Contractor shall submit three (3) sets of shop drawings. Some shop drawings as either denoted in the Contract Documents or by the Florida Building Code (Code) or Florida Statute, such as structural drawings, require that they be prepared by a licensed engineer. It is the sole responsibility of the Contractor to ensure that the Shop Drawings meet all Code requirements.

In addition to all shop drawings required by the Contract Documents the Contractor must provide shop drawings for; all drainage structures including catch basins, drainage pipe, ballast rock, and exfiltration trench filter fabric.

If the Shop Drawings show or indicate departures from the Contract Documents, Contractor shall make specific mention thereof in its letter of transmittal. Failure to point out such departures shall not relieve Contractor from its responsibility to comply with the Contract and Documents.

Project Manager or Consultant shall review and accept or reject with comments, Shop Drawings within fourteen (14) calendar days from the date received. Project Manager's or Consultant's approval of Shop Drawings will be general and shall not relieve Contractor of responsibility for the accuracy of such Shop Drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by the Contract Documents and not indicated on the Shop Drawings. No Work called for by Shop Drawings shall be performed until said Shop Drawings have been approved by Project Manager and/or Consultant. Approval shall not relieve Contractor from responsibility for errors or omissions of any sort on the Shop Drawings.

No approval will be given to partial submittals of Shop Drawings for items which interconnect and/or are interdependent where necessary to properly evaluate the design. It is Contractor's responsibility to assemble the Shop Drawings for all such interconnecting and/or interdependent items, check them and then make one submittal to Project Manager and/or Consultant along with its comments as to compliance, noncompliance, or features requiring special attention.

If catalog sheets or prints of manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink.

The minimum size for shop drawings shall be 11" X 17". Each shop drawing shall be clear, thoroughly detailed and shall have listed on it all Contract Documents references, drawing number(s), specification section number(s) and the shop drawing numbers of related work. Shop drawings must be complete in every detail, including location of the Work. Materials, gauges, methods of fastening and spacing of fastenings, connections with other work, cutting, fitting, drilling and any and all other necessary information per standard trade practices or as required for any specific purpose shall be shown.

Where professional calculations and/or certification of performance criteria of materials, systems, and or equipment are required, the Project Manager and/or Consultant are entitled to rely upon the accuracy and completeness of such calculations and certifications submitted by the Contractor. Calculations, when required, shall be submitted in a neat clear and easy format to follow.

Contractor shall keep one set of Shop Drawings marked with Project Manager's and/or Consultant's approval at the job site at all times.

44. Product Data

Contractor shall submit four (4) copies of product data, warranty information and operating and maintenance manuals. Each copy must be marked to identify applicable products, models, options and other data. Contractor shall supplement manufacturer's standard data to provide information unique to the Work.

Contractor shall only submit pages that are pertinent. Submittals shall be marked to identify pertinent products, with references to the specifications and the Contract Documents. Identify reference standards, performance characteristics and capacities, wiring and piping diagrams and controls, component parts, finishes, dimensions and required clearances.

Contractor shall submit a draft of all product data, warranty information and operating and maintenance manuals at 50% completion of construction.

45. Samples

Contractor shall submit samples to illustrate the functional characteristics of the product(s). Submittals shall be coordinated for different categories of interfacing Work. Contractor shall include identification on each sample and provide full information.

46. Record Set

Contractor shall maintain in a safe place at the Project(s) site(s) one record copy and one permit set of the Contract Documents, including, but not limited to, all Drawings, Specifications, shop drawings, amendments, Change Orders, RFIs, and Field Directives, as well as all written interpretations and clarifications issued by the Project Manager or Consultant, in good order and annotated to show all changes made during construction. The record documents shall be continuously updated by Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Construction Change Directives, and Field Directives as well as all written interpretations and clarifications, and all concealed and buried installations of piping, conduit and utility services. Contractor shall certify the accuracy of the updated record documents. As a condition precedent to Town's obligation to pay Contractor, the Contractor shall provide evidence, satisfactory to the Project Manager and the Consultant, that Contractor is fulfilling its obligation to continuously update the record documents. All buried items, outside the Project(s) site(s), shall be accurately located on the record documents as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The record documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. The record documents shall be available to the Town and the Consultant for reference. Upon completion of the Work and as a condition precedent to Contractor's

entitlement to final payment, the record documents shall be delivered to the Project Manager or Consultant by the Contractor. The Record Set of Drawing shall be submitted in both hard copy and as electronic plot files.

47. Supplemental Drawings and Instructions

The Project Manager or Consultant shall have the right to approve and issue supplemental instructions setting forth written orders, instructions, or interpretations concerning the Contract Documents or its performance, provided such Supplemental Instructions involve no change in the Contract Documents Price or this Contract Documents Time. Project Manager or Consultant shall have the right to modify the details of the plans and specifications, to supplement the plans and specifications with additional plans, drawings or additional information as the Work proceeds, all of which shall be considered as part of the Contract Documents. In case of disagreement between the written and graphic portions of the Contract Documents, the written portion shall govern.

48. Contractor Furnished Drawings

The Contract Documents may require the Contractor to furnish design, shop and/or as-built drawings depending on the nature and scope of the Work to be performed. The following applies to the different types of drawings.

The Project Manager and/or Consultant shall, after review of the drawings, initial and mark the drawings in one of the following manners:

1. ACCEPTED - No correction required.
 2. PROCEED AS CORRECTED - Minor changes or corrections identified. Work can proceed subject to re-submittal and acceptance of the drawings.
 3. REVISE AND RESUBMIT- Significant changes or corrections are recommended. Submittal must be revised and resubmitted for acceptance prior to Work proceeding.
 4. REJECTED - Not in accordance with the Contract and/or Contract Documents due to excessive changes or corrections or other justifiable reason. Drawings must be corrected and resubmitted prior to any Work being performed.
- Revisions required by the permitting jurisdiction must also be reviewed and accepted by the Project Manager or Consultant prior to resubmission to the permitting agency. Acceptance by the Town shall not relieve the Contractor from responsibility for errors and omissions in the drawings.

49. Substitutions

Substitutions will only be considered after the award of the Contract. 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 Project Manager if sufficient information is submitted by Contractor to

allow Town and Consultant to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Town and Consultant from anyone other than Contractor.

If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make application to the Consultant for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall 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 to adapt the design to the proposed substitute and whether or not incorporation or use by 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 shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Project Manager and the Consultant in evaluating the proposed substitute. The Project Manager or Consultant may require the Contractor to furnish at Contractor's expense additional data about the proposed substitute.

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to the Consultant, if the Contractor submits sufficient information to allow the Consultant to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the Consultant shall be the same as those provided herein for substitute materials and equipment.

The Consultant shall be allowed a reasonable time within which to evaluate each proposed substitute. The Consultant and the Town shall be the sole judges of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without the Town's and the Consultant's prior written acceptance which shall be evidenced by either a Change Order or an approved submittal. The Town and the Consultant may require the Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. If the Town and the Consultant rejects the proposed substitute, at their discretion, the Town may require the Contractor to reimburse the Town for the charges of the Consultant for evaluating the proposed substitute.

Contractor shall maintain sole liability and responsibility for ensuring that all substitutions and any required design of such are in full compliance with and meet all the requirements of the Contract Documents.

50. Town Furnished Drawings

The Town, at its sole discretion, may furnish design drawings. It shall be the sole responsibility of the Contractor to bring to the immediate attention of the Project Manager and the Consultant any discrepancies between the drawings and existing conditions, excluding hidden or unforeseen conditions, discovered prior to commencing and during the Work. The Contractor shall be solely responsible for verifying the accuracy of the drawings prior to commencing the Work, and shall be responsible for any errors or revisions of the Work, which might have been avoided by notifying the Town prior to commencement. This shall also apply to any revisions or omissions identified by the Contractor. The Contractor shall submit all requests for information entitled Request for Information (RFI). The Town shall respond to all RFI's in writing.

The Contractor shall have no basis for any claim for additional costs resulting from their failure to identify any required revisions, omissions and/or errors, not identified in writing to the Project Manager or Consultant prior to commencing the Work.

51. Interpretation of Drawings and Documents

Drawings and specifications are intended to be consistent, be mutually explanatory, and should be used together and not separately. During the performance of the Project(s), should any errors, omissions, conflicts, ambiguities or discrepancies be found in the drawings and/or specifications, the Project Manager or the Consultant will clarify in writing the intent of the drawings and/or specifications and the Contractor agrees to abide by the Project Manager's or Consultants interpretation and perform the Work in accordance with the decision of the Project Manager or the Consultant. In such event, the Contractor will be held to have included in its Contract Price the best materials suitable for the purpose and/or methods of construction.

The drawings are to be addressed as a complete set and should not be used in parts. Contractor is responsible to coordinate the set of drawings with all trades to ensure that the Work will be performed correctly and coordinated among the trades. Contractor shall not scale the drawings.

52. Product and Material Testing

All tests shall be performed by the Contractor, except where otherwise specifically stated in the Contract Documents. All costs for testing performed by the Contractor shall be at the Contractor's expense. All reports are to be sent directly to the Town's Project Manager with a copy to the Contractor. The Town may, in its sole and absolute discretion, test materials and products at its own cost. However, should such materials or products fail to pass the test and/or meet the requirements of the Contract Documents, the Contractor shall reimburse the Town for the cost of such tests and repair or replace said materials or products. In such instances the Town may deduct such cost from any payments pending to the Contractor. The Town may require that the Contractor provide the name and qualification of the company (ies) providing the testing services, inclusive of the testing

laboratory (ies). The Town, in its sole discretion, may accept or reject the use of any company or laboratory that it determines does not possess the required licenses or expertise to perform their portion of the Work.

53. Field Directives

The Project Manager or Consultant may at times issue field directives to the Contractor based on visits to the Project(s) Site(s). Such Field Directives shall be issued in writing and the Contractor shall be required to comply with the directive. Where the Contractor believes that the directive is outside the scope of the Work, the Contractor shall, within 48 hours, notify the Project Manager or Consultant that the work is outside the scope of the Work. At that time the Field Directive may be rescinded or the Contractor may be required to submit a request for a change to the Contract. Where the Contractor is notified of the Town's position that the Work is within the scope and the Contractor disagrees, the Contractor shall notify the Project Manager or Consultant that the Contractor reserves the right to make a claim for the time and monies based on the Field Directive. At no time shall the Contractor refuse to comply with the directive. Failure to comply with the directive may result in a determination that the Contractor is in default of the Contract.

54. Changes in the Work or Contract Documents

Without invalidating the Contract Documents and without notice to any Surety, Town reserves and shall have the right, from time to time to make such increases, decreases or other changes in the character or quantity of the Work under the Contract Documents as may be considered necessary or desirable to complete fully and acceptably the proposed construction of a Project in a satisfactory manner. Any extra or additional Work within the scope of the Project(s) must be accomplished by means of appropriate Field Orders and Supplemental Instructions or Change Orders.

Any changes to the terms of the Contract Documents must be contained in a written document, executed by the parties hereto. This section shall not prohibit the issuance of Change Orders executed only by Town.

55. Continuing the Work

Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with Town, including disputes or disagreements concerning a request for a Change Order, a request for a change in the Contract price or Contract time for completion. The Work shall not be delayed or postponed pending resolution of any disputes or disagreements.

56. Change Orders

Changes in the quantity or character of the Work within the scope of the Project(s) which are not properly the subject of Field Orders or Supplemental Instructions, including all

changes resulting in changes in the Contract Price, or the Contract Time, shall be authorized only by Change Orders approved in advance and issued in accordance with the provisions of the Town.

In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, Town reserves the right at its sole option to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed work; or submit the matter in dispute to the Director as set forth in Article 88, Resolution of Disputes. During the pendency of the dispute, and upon receipt of a Change Order approved by Town, Contractor shall promptly proceed with the change in the Work involved and advise the Project Manager, Consultant, and Director in writing within seven (7) calendar days of Contractor's agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.

On approval of any Contract change increasing the Contract Price, Contractor shall ensure that the performance bond and payment bond (if applicable) are increased so that each reflects the total Contract Price as increased.

Under circumstances determined necessary by Town, Change Orders may be issued unilaterally by Town.

The Town reserves the right to order changes which may result in additions to or reductions from the amount, type or value of the Work shown in the Contract and which are within the general scope of the Contract Documents. Any such changes will be known as Extra Work. No Extra Work shall be performed except pursuant to written orders of the Project Manager or Consultant expressly and unmistakably indicating his/her intention to treat the Work described therein as Extra Work. In the absence of such an order, the Project Manager or Consultant may direct, order or require the Contractor to perform any Work including that which the Contractor deems to be Extra Work. The Contractor shall nevertheless comply and shall promptly and in no event after, begin the performance thereof or incur cost attributable thereto and give written notice to the Project Manager stating why he deems such Work (hereinafter "Disputed Work") to be Extra Work. Said notice is for the purposes of (1) affording an opportunity to the Project Manager to cancel such order, direction or requirements promptly; (2) affording an opportunity to the Project Manager to keep an accurate record of materials, labor and other items involved; and (3) affording an opportunity to the Town to take such action as it may deem advisable in light of such disputed Work.

57. Change Order Procedure

Extra Work shall result in an equitable adjustment (increase or decrease) to the Contract representing the reasonable cost or the reasonable financial savings related to the change in Work. Extra Work may also result in an equitable adjustment in the Contract schedule for performance for both the Extra Work and any other Work affected by the Extra Work.

The Town shall initiate the Extra Work procedure by a notice to Contractor outlining the proposed Extra Work. Upon receipt of the notice to proceed with the Extra Work, the

Contractor is required to immediately start the Extra Work. The Contractor is required to obtain permission for an extension to start the Extra Work if it is beyond the Contractor's ability to start within the allotted timeframe.

The Contractor is required to provide the Project Manager with a detailed Change Proposal Request, using Town Forms CPR Parts A-C (available on the CIP webpage), which shall include requested revisions to the Contract, including but not limited to adjustments in this Contract Price and Contract Time. The Contractor is required to provide sufficient data in support of the cost proposal demonstrating its reasonableness. In furtherance of this obligation, the Town may require that the Contractor submit any or all of the following: a cost breakdown of material costs, labor costs, labor rates by trade, and Work classification and overhead rates in support of Contractor's Change Proposal Request. The Contractor's Change Proposal Request must include any schedule revisions and an explanation of the cost and schedule impact of the Extra Work on the Project(s). If the Contractor fails to notify the Project Manager or Consultant of the schedule changes associated with the Extra Work, it will be deemed to be an acknowledgment by Contractor that the proposed Extra Work will not have any scheduling consequences. The Contractor agrees the Change Proposal Request will in no event include a combined profit and overhead rate in excess of ten (10%) percent of the direct labor and material costs, unless the Project Manager determines that the complexity and risk of the Extra Work is such that an additional factor is appropriate. The Change Proposal Request may be accepted or modified by negotiations between the Contractor and the Town. If an agreement on the Extra Work is reached, both parties shall execute the Extra Work order in writing via a Change Order. The execution by the Contractor of the Change Order shall serve as a release of the Town from all claims and liability to the Contractor relating to, or in connection with, the Extra Work, including any impact, and any prior acts, neglect or default of the Town relating to the Extra Work.

Upon execution of a change order that affects the Contract Time the Contractor shall, within five (5) business days submit a revised Project schedule reflecting the changes against the baseline schedule.

58. No Oral Changes

Except to the extent expressly set forth in the Contract, no change in or modification, termination or discharge of the Contract or, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the parties charged, therewith or their duly authorized representative.

59. Value of Change Order Work

The value of any Work covered by a Change Proposal Request or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways: Where the Work involved is covered by unit prices contained in the Contract, by application of unit prices to the quantities of items involved.

By mutual acceptance of a lump sum which Contractor and Project Manager acknowledge contains a component for overhead and profit.

On the basis of the "cost of Work," determined as provided in this, plus a Contractor's fee for overhead and profit which is determined as provided in this Article.

The term "cost of Work" means the sum of all direct costs necessarily incurred and paid by Contractor in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by the Project Manager, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in herein.

Payroll costs for employees in the direct employ of Contractor in the performance of the Work described in the Change Proposal Request under schedules of job classifications agreed upon by Project Manager and Contractor. Payroll costs for employees not employed full time on the Work covered by the Change Proposal Request shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay application thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing the Work after regular working hours, on Sunday or legal holidays shall be included in the above to the extent authorized by Town.

Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Town deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Town. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to Town and Contractor shall make provisions so that they may be obtained. Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Town with the advice of Consultant and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

If required by the Town, Contractor shall obtain competitive bids for the Change Order Work. Contractor shall deliver such competitive bids to the Town who will determine which bids will be accepted. If 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 Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

The term "cost of the Work" shall include any of the following:

Cost of special consultants, including, but not limited to, consultants, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the Work described in the Change Order.

Supplemental costs including the following:

The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work except for local travel to and from the site of the Work.

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

Sales, use, or similar taxes related to the Work, and for which Contractor is liable, imposed by any governmental authority.

Deposits lost for causes other than Contractor's negligence; royalty payments and fees for permits and licenses.

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

Receipted minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

Cost of premiums for additional bonds and insurance required because of changes in the Work.

The term "cost of the Work" shall **not** include any of the following:

Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, consultants, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in its principal or a branch office for general administration of the Work and not specifically included in the agreed-upon schedule of job classifications., all of which are to be considered administrative costs covered by Contractor's fee.

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

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

Cost of premiums 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 additional bonds and insurance required because of changes in the Work.

Costs due to the negligence or neglect of Contractor, any Subcontractors, 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.

Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in this Article.

Contractor's fee allowed to Contractor for overhead and profit shall be determined as follows:

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

A fee based on the following percentages of the various portions of the cost of the Work:

Where the Contractor self-performs the Work, Contractor's fee shall not exceed ten percent (10%).

Where a sub-contractor performs the Work, Contractor's fee shall not exceed seven and one half percent (7.5%); and if a subcontract is on the basis of cost of the Work plus a fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall not exceed ten percent (10%); and

No fee shall be payable for special consultants or supplemental costs.

Contractor's overhead is considered to cover all indirect costs and shall also include the costs of insurance and bonds.

The amount of credit to be allowed by Contractor to Town for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any, however, Contractor shall not be entitled to claim lost profits for any Work not performed.

Whenever the cost of any Work is to be determined pursuant to this Article, Contractor will submit in a form acceptable to Project Manager or Consultant an itemized cost breakdown together with the supporting data.

Where the quantity of any item of the Work that is covered by a unit price is increased or decreased by more than twenty percent (20%) from the quantity of such Work indicated in the Contract Documents, an appropriate Change Order may be issued to adjust the unit price, if warranted.

Whenever a change in the Work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, Contractor shall submit an initial cost estimate acceptable to the Project Manager or Consultant.

Breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost.

Whenever a change involves Contractor and one or more Subcontractors and the change is an increase in the Contract Price, overhead and profit percentage for Contractor and each Subcontractor shall be itemized separately.

Each Change Order must state within the body of the Change Proposal Request whether it is based upon unit price, negotiated lump sum, or "cost of the Work."

60. Extra Work Directive

If the parties fail to reach agreement with respect to the proposed Extra Work, or in case or extenuating circumstances, the Town may nevertheless issue a directive to the Contractor to do the proposed Extra Work. Immediately upon receipt of the Extra Work Directive, the Contractor shall be obligated to proceed with the Work set forth in that directive.

Except as provided below, the Contractor shall be entitled to initiate a dispute pursuant to the Article 88, Resolution of Disputes, by furnishing a written statement to the Project Manager within five (5) days of the Extra Work Directive, based upon any aspect, of such Extra Work which the Contractor disputes. Such dispute must relate to specific matters raised or specific matters reserved by the Contractor in its proposal and have not been resolved prior to the issuance of the Extra Work Directive. The written statement must set forth all details of the Contractor's claim including the manner that the disputed item was specified in the Contractor's proposal. During the pendency of any dispute hereunder, the Contractor must proceed with Work as set forth in the Extra Work Directive unless otherwise advised by the Project Manager's written instructions. In the event there is a dispute as to price, the Contractor will be paid in accordance with the following paragraph.

This payment(s) will be in full satisfaction of the Contractor's claim for an adjustment to the value of the Contract.

Compensation for Extra Work in the event of the parties' inability to agree upon a mutually satisfactory price shall be as follows:

No payment will be made to the Contractor for Extra Work in excess of "Actual and Necessary Cost" which is to say time and materials plus a mark-up not to exceed 10%. This will not vary, whether the Extra Work is performed by the Contractor or his subcontractor. Any exceptions must be approved by the Project Manager.

"Actual and Necessary Net Cost" shall be deemed to include the actual and necessary cost of the Extra Work for (i) labor, which includes wages, payroll deductions, if any, made by the Contractor as employer pursuant to bona fide collective bargaining labor agreements applicable to the Work; (ii) contributions to the State Unemployment Insurance Law, (iii) excise taxes pursuant to Federal Social Security Act; (iv) any increases in public liability and property damage insurance or performance and payment bonds occasioned solely by the Extra Work, (v) the actual and necessary operating expenses (except the expense of supplies and small tools not operated by mechanical or electrical power), power for such plant and a reasonable rental for the same (including small power tools), as determined by the Project Manager; and (vi) any additional materials necessary for the performance of the Extra Work.

In case any Work or materials shall be required to be done or furnished under the provisions of this Article, the Contractor shall at the end of each day furnish to the Town such documentation as the Town may require to support all the costs of the Extra Work. If payments on account are desired as the Extra Work progresses, the Contractor shall render an itemized statement showing the total amount expended for each class of labor and for each kind of material on account of each item of Work as a condition precedent to the inclusion of such payment in a partial estimate. Upon the request of the Town, the Contractor shall produce for audit by the Town, books, vouchers, collective bargaining labor agreements, records or other documents showing the actual cost for labor and materials. Such documents shall not be binding on the Town. The Project Manager shall determine any questions or dispute as to the correct cost of such labor or materials or plant.

In case the Contractor is ordered to perform Work under this Article, which in the opinion of the Project Manager, it is impracticable to have performed by the Contractor's own employees, the Contractor will, subject to the approval of the Project Manager, be paid the actual cost to Contractor of such Work, and in addition thereto five (5%) percent to cover the Contractor's superintendence, administration and other overhead expenses.

Payment of any amount under this Article shall be subject to subsequent audit and approval, disapproval, modification or revision by representatives of the Town.

61. As-Built Drawings

During the Work, Contractor shall maintain records of all deviations from the Drawings and Specifications as approved by the Project Manager or Consultant and prepare As-Built Record Drawings showing correctly and accurately all changes and deviations made during construction to reflect the Work as it was actually constructed. It is the responsibility of the

Contractor to check the As-Built Drawings for errors and omissions prior to submittal to the Town and certify in writing that the As-Built Drawings are correct and accurate, including the actual location of all internal piping, electrical/signal conduits in or below the concrete floor. Indicate the size, depth and voltage in each conduit.

Legibly mark to record actual construction: On-site structures and site Work as follows:

Depths of various elements of foundation in relation to finish first floor datum.

All underground piping and ductwork with elevations and dimensions and locations of valves, pull boxes, etc. Changes in location Horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements. Actual installed pipe material, class, etc.

Location of internal utilities and appurtenances concealed in the construction, referenced to visible and accessible features of the structure. Air conditioning ducts with locations of dampers, access doors, fans and other items needing periodic maintenance.

Field changes in dimensions and details.

Changes made by Project Manager's or Consultant's written instructions or by Change Order.

Details not on original Contract Drawings.

Equipment, conduit, electrical panel locations.

Project Manager's or Consultant's schedule changes according to Contractor's records and shop drawings.

Specifications and Addenda: Legibly mark each section to record:

Manufacturer, trade name, catalog number and Supplier of each product and item of equipment actually installed.

Changes made by Project Manager's or Consultant's written instructions or by Change Order.

Approved Shop Drawings: Provide record copies for each process equipment, piping, electrical system and instrumentation system.

As-built documents shall be updated monthly as a condition precedent to payment.

For construction of new building or building additions as-built drawings signed and sealed by a Florida licensed Registered Land Surveyor.

62. Worker's Identification

The Contractor's employees, who include any Subcontractor, shall wear an identification card provided by the Contractor. The identification card shall bear the employee's picture, name, title and name of the employer. Failure by a Contractor's employee to wear such identification may result in his removal from the Work until such time as the identification card is obtained and worn. Such removal shall not act as a basis for the Contractor to submit a claim for an extension of time.

63. Removal of Unsatisfactory Personnel

The Town may make written request to the Contractor for the prompt removal and replacement of any personnel employed or retained by the Contractor, or any or Sub-

Contractor engaged by the Contractor to provide and perform services or Work pursuant to the requirements of the Contract Documents. The Contractor shall respond to the Town within seven (7) calendar days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. The Town shall make the final determination as to the removal of unsatisfactory personnel from Work assigned by Town. The Contractor agrees that the removal of any of its employees does not require the termination or demotion of employee(s).

64. Substantial Completion, Punch List, & Final Completion

The Work shall be substantially complete when the Project Manager, in the reasonable exercise of his/her discretion determines that the Work is complete and there are no material and/or substantial variations from the Contract Documents and the Work is fit for its intended purpose. Upon Substantial Completion, the Project Manager and the Contractor shall sign the Substantial Completion Inspection Form. The signing of this form shall not relieve the Contractor from its obligation to complete the Project.

When the Contractor believes that the Work is substantially complete, the Contractor shall request in writing that the Project Manager or Consultant inspect the Work to determine if Substantial Completion has been achieved. No request for Substantial Completion inspection is to be submitted until the Contractor has obtained a Certificate(s) of Occupancy, Certificate of Completion or Use, or a Temporary Certificate of Occupancy or any other approvals from agencies having jurisdiction over the Work. The Project Manager or Consultant shall schedule the date and time for any inspection and notify the Contractor and any other parties deemed necessary. During this inspection, the Project Substantial Completion Inspection Form will be completed as necessary. Any remaining Construction Work shall be identified on this form and shall be known as Punch List Work. The Punch List shall be signed by the Project Manager and/or Consultant, and the Contractor confirming that the Punch List contains the item(s) necessary to complete the Work. The failure or refusal of the Contractor to sign the Project Substantial Completion Inspection Form or Punch List shall not relieve the Contractor from complying with the findings of the Project Substantial Completion Inspection and completing the Project to the satisfaction of the Town

Where the Punch List is limited to minor omissions and defects, the Project Manager shall indicate that the Work is substantially complete subject to completion of the Punch List. Where the Project Manager or Consultant determines, on the appropriate form that the Work is not substantially complete, the Project Manager or Consultant shall provide a list of all open items necessary to achieve Substantial Completion. Upon completion of such Work, the Contractor shall request another Substantial Completion inspection.

The Project Manager or Consultant, and the Contractor shall agree on the time reasonably required to complete all remaining Work included in the Punch List.

Upon the receipt of all documentation, resolution of any outstanding issues and issuance of final payment, the Project Manager or Consultant shall notify the Contractor in writing of the closeout of the Project.

The Town will prepare a Certificate of Substantial Completion in the form which shall establish the Date of Substantial Completion. Once substantial completion is achieved the Town shall be responsible for security, maintenance, heat, utilities, damage to the Project site, and insurance; and shall list all Work yet to be completed to satisfy the requirements of the Contract Documents for Final Completion. The failure to include any items of corrective Work on such list does not alter the responsibility of Contractor to complete all of the Work in accordance with the Contract Documents. Warranties required by the Contract Documents shall commence on the date of Final Acceptance completion of the Work or designated portion thereof unless otherwise provided in the Contract Documents.

65. Acceptance and Final Payment

Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance, Project Manager and/or Consultant shall, within ten (10) calendar days, make an inspection thereof. If Project Manager and/or Consultant find the Work acceptable, the requisite documents have been submitted and the requirements of the Contract Documents fully satisfied, and all conditions of the permits and regulatory agencies have been met, a Final Certificate for Payment **shall** be issued by Project Manager, stating that the requirements of the Contract Documents have been performed and the Work is ready for acceptance under the terms and conditions thereof.

Before issuance of the Final Certificate for Payment, Contractor shall deliver to the Project Manager or Consultant a final release of all liens arising out of the Contract Documents, receipts in full in lieu thereof; an affidavit certifying that all suppliers and Subcontractors have been paid in full and that all other indebtedness connected with the Work has been paid, and a consent of the surety to final payment; the final corrected as-built drawings; operations and maintenance data, and the final bill of materials, if required, and payment application. Contractor shall deliver the written Contractor's warranty and all Manufacturer's warranties prior to issuance of the Final Certificate for Payment.

Prior to approval of final payment the Project Manager shall provide written confirmation to the Contractor that any and all training required by the Contract Documents has been provided to the satisfaction of the Project Manager.

If, after the Work has been substantially completed, full completion thereof is materially delayed through no fault of Contractor, and Project Manager or Consultant so certifies, Town shall, upon such certification of Consultant, and without terminating the Contract Documents, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

The acceptance of final payment shall constitute a waiver of all claims by Contractor, except those previously made in strict accordance with the provisions of the Contract and identified by Contractor as unsettled at the time of the application for final payment.

66. **NPDES Requirements**

Contractor shall comply with the State of Florida rules and regulations for the National Pollutant Discharge Elimination System (NPDES) including but not limited to all permitting, Notices of Intent, and the Storm Water Pollution Prevention Plan (SWPPP). All costs for NPDES and SWPPP shall be included in the Bid prices. For further information on compliance requirements for NPDES and SWPPP contact the Town of Miami Public Works Department at (305) 416-1200 or visit the State of Florida website at <http://www.dep.state.fl.us/water/stormwater/npdes/>. Contractor is responsible for obtaining, completing and paying for any required NPDES application or permits that may be required.

67. **Force Majeure**

Should any failure to perform on the part of Contractor be due to a condition of force majeure as that term is interpreted under Florida law, the Town may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure. If the Contractor is delayed in performing any obligation under the Contract Documents due to a force majeure condition, the Contractor shall request a time extension from the Town within two (2) working days of said force majeure occurrence. Any time extension shall be subject to mutual agreement and shall not be cause for any claim by the Contractor for extra compensation unless additional services are required. **Do Not Include** inclement weather except as permitted by Florida law and may not include the acts or omissions of Sub-contractors.

68. **Extension of Time**

Any reference in this section to the Contractor shall be deemed to include suppliers, and permitted Sub-Contractors, whether or not in privities of contract with the Contractor for the purpose of this article.

If the Contractor is delayed at any time during the progress of the Work beyond the Contract Time and/or Notice to Proceed (NTP) by the neglect or failure of the Town or by a Force Majeure, then the Contract Time set forth in the Contract shall be extended by the Town subject to the following conditions:

The cause of the delay arises after issuance of the NTP and could not have been anticipated by the Contractor by reasonable investigation before proceeding with the Work;

The Contractor demonstrates that the completion of the Work will be actually and necessarily delayed;

The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay.

Note: A delay meeting all the conditions of the above, shall be deemed an Excusable Delay. The Town shall only consider weather related delays where adverse weather directly impacts the critical path of the Project Schedule. However, the Town will also factor in

other factor in considering an extension of time, including the length of the weather delay, and the adverse weather conditions as they relate to typical weather patterns during the period the Work is being performed.

The Town reserves the right to rescind or shorten any extension previously granted if subsequently, the Project Manager determines that any information provided by the Contractor in support of a request for an extension of time was erroneous; provided however, that such information or facts, if known, would have resulted in a denial of the request for an Excusable Delay. Notwithstanding the above, the Project Manager will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.

The request for an Excusable Delay shall be made within ten (10) calendar days after the time when the Contractor knows or should have known of any cause for which it may claim an extension of time and shall provide any actual or potential basis for an extension of time, identifying such causes and describing, as fully as practicable at that time, the nature and expected duration of the delay and its effect on the completion of that part of the Work identified in the request. The Project Manager may require the Contractor to furnish such additional information or documentation, as the Project Manager shall reasonably deem necessary or helpful in considering the requested extension.

The Contractor shall not be entitled to an extension of time unless the Contractor affirmatively demonstrates that it is entitled to such extension.

The Project Manager shall endeavor to review and respond to the Contractor's request for Excusable Delays in a reasonable period of time; however, the Contractor shall be obligated to continue to perform the Work required regardless of whether the Project Manager has issued a decision or whether the Contractor agrees or disagrees with that decision.

With regard to an injunction, strike or interference of public origin which may delay the Project, the Contractor shall promptly give the Project Manager a copy of the injunction or other orders and copies of the papers upon which the same shall have been granted. The Town shall be afforded the right to intervene and become a party to any suit or proceeding in which any such injunction shall be obtained and move to dissolve the same or otherwise, as the Town may deem proper.

The permitting of the Contractor to proceed with the Work subsequent to the date specified in the Contract (as such date may have been extended by a change order), the making of any payment to the Contractor, the issuance of any Change Order, shall not waive the Town's rights under the Contract, including but not limited to the assessment of liquidated damages or declaring Contractor in default.

69. Notification of Claim

Any claim for a change in the Contract Time or Contract Price shall be made by written notice by Contractor to the Project Manager and to Consultant within ten (10) business days of the commencement of the event giving rise to the claim and stating the general nature and cause of the claim. Thereafter, within twenty (20) calendar days of the termination of

the event giving rise to the claim, written notice of the extent of the claim with supporting information and documentation shall be provided unless the Project Manager or Consultant allows an additional period of time to ascertain more accurate data in support of the claim and such notice shall be accompanied by Contractor's written notarized statement that the adjustment claimed is the entire adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. All claims for changes in the Contract Time or Contract Price shall be determined by the Project Manager or Consultant in accordance with Article 69, Contractor's Damages for Delay hereof, if Town and Contractor cannot otherwise agree. It is expressly and specifically agreed that any and all claims for changes to the Contract time or Contract price shall be waived if not submitted in strict accordance with the requirements of this Article.

The Contract time will be extended in an amount equal to time lost on critical Work items due to delays beyond the control of and through no fault or negligence of Contractor if a claim is made therefore as provided in this Article. Such delays shall include, but not be limited to, acts or neglect by any separate contractor employed by Town, fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

70. Extension of Time not Cumulative

In case the Contractor shall be delayed for any period of time by two or more of the causes mentioned in Article 70, Excusable, Delays, the Contractor shall not be entitled to a separate extension for each one of the causes; only one period of extension shall be granted for the delay.

71. Contractor's Damages for Delay

No claim for damages or any claim, other than for an extension of time, shall be made or asserted against Town by reason of any delays except as provided herein. Contractor shall not be entitled to an increase in the Contract price or payment or compensation of any kind from Town for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by Contractor for actual delays due solely to fraud, bad faith or active interference on the part of Town or its Consultant. Otherwise, Contractor shall be entitled only to extensions of the Contract Time for completion of the Work as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

Except as may be otherwise specifically provided for in the Contract Documents, the Contractor agrees to make no claim for damages for delay of any kind in the performance of the Contract Documents whether occasioned by any act or omission of the Town or any of its representatives (whether it is an Excusable Delay or otherwise) and the Contractor agrees that any such claim shall be compensated solely by an extension of time to complete

performance of the Work. In this regard, the Contractor alone hereby specifically assumes the risk of such delays, including without limitation: delays in processing or approving shop drawings, samples or other submittals or the failure to render determinations, approvals, replies, inspections or tests of the Work, in a timely manner. Contractor shall not receive monetary compensation for Town delay. Time extensions may be authorized by the Town in certain situations.

72. Excusable Delay, Non-Compensable

Excusable Delay is (i) caused by circumstances beyond the control of Contractor, its Subcontractors, suppliers and vendors, and is also caused by circumstances beyond the control of the Town or Consultant, or (ii) is caused jointly or concurrently by Contractor or its Subcontractors, suppliers or vendors and by the Town or Consultant. Then Contractor shall be entitled only to a time extension and no compensation for the delay.

Contractor is entitled to a time extension of the Contract time for each day the Work is delayed due to Excusable Delay. Contractor shall document its claim for any time extension as provided in Article 67, Notification of Claim, hereof.

Failure of Contractor to comply with Article 67, Notification of Claim hereof as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

73. Lines and Grades

The Contractor shall, at its own expense, establish all working and construction lines and grades as required from the Project control points set by the Town, and shall be solely responsible for the accuracy thereof.

74. Defective Work

Project Manager or Consultant shall have the authority to reject or disapprove Work which Project Manager or Consultant finds to be defective. If required by Project Manager or Consultant, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

Should Contractor fail or refuse to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by Project Manager or Consultant, Town shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary at Contractor's expense. Any expense incurred by Town in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor, or may be charged against the Performance Bond,. In the event of failure of Contractor to make all necessary repairs promptly and fully, Town may declare Contractor in default.

If, within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, or by any specific provision of the Contract, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor, after receipt of written notice from Town, shall promptly correct such defective or nonconforming Work within the time specified by Town without cost to Town, to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents including but not limited to any claim regarding latent defects. Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered, or obligate Town to final acceptance.

75. Acceptance of Defective or Non-Conforming Work

The Town, in its sole discretion, may elect in writing to accept defective or non-conforming Work instead of requiring its removal and correction. In such instances, a Change Order will be issued to reflect an appropriate reduction in the Contract sum, or, if the amount is determined after final payment, any difference in the amount shall be paid to the Town by the Contractor.

76. Uncovering Finished Work

The Project Manager's, Inspector's and/or Consultant's right to make inspections shall include the right to order the Contractor to uncover or take down portions of finished Work. The Project Manager /or Consultant shall notify the Contractor in writing concerning all uncovered finished Work. Should the Work prove to be in accordance with the Contract Documents, the uncovering or taking down and the replacing and the restoration of the parts removed will be treated as Extra Work for the purpose of computing additional compensation and an extension of time. Should the Work examined prove unsatisfactory, such uncovering, taking down, replacing and restoration shall be at the expense of the Contractor. Such expenses shall also include repayment to the Town for any and all expenses or costs incurred by it, including employee salaries or related cost, in connection with such uncovering, taking down, replacing and restoration at the Project site.

77. Correction of Work

The Contractor shall promptly correct all Work rejected by the Project Manager or Consultant as defective or as failing to conform to the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all cost of correcting such rejected Work, including the cost of the Town's additional services thereby made necessary.

The Contractor further agrees that after being notified in writing by the Project Manager or Consultant of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work, the Contractor will commence and prosecute with

due diligence all Work necessary to fulfill the terms of the Contract and to complete the Work within a reasonable period of time, as determined by the Project Manager or Consultant, and in the event of failure to so comply, the Contractor does hereby authorize the Town to proceed to have such Work done at the Contractor's expense and that the Contractor will pay the cost thereof upon demand. The Town shall be entitled to all costs, including reasonable attorneys' fees, necessarily incurred upon the Contractor's refusal to pay the above costs. Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to the health or safety of personnel, property, or licensees, the Town may undertake, at the Contractor's expense, without prior notice, all Work necessary to correct such hazardous condition when it was caused by Work of the Contractor not being in accordance with the requirements of the Contract. If, within one (1) year after the date of final completion of the Project or within such longer period of time as may be prescribed by law, by the Contract Documents, or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Town to do so. The Town shall give such notice promptly after discovery of the condition. All such defective or non-conforming Work shall be removed from the site if necessary and the Work shall be corrected to comply with the Contract Documents without cost to the Town.

78. Maintenance of Traffic and Public Streets

Scope of Work

The Contractor shall be responsible for the maintenance of public streets and traffic control necessary to perform the Work under the Contract Documents. The cost of traffic control shall be included in the Contractor's Bid.

Regulations

As used herein, any reference to Miami-Dade County, its departments, or its published regulations, permits and data, shall be synonymous and interchangeable with other recognized governing bodies over particular areas or streets, or their departments, published regulations (i.e., Manual of Uniform Traffic Control Devices (MUTCD), FDOT Roadway and Bridge Standard Index Drawing Book), permits or data. The Contractor shall abide by all applicable laws, regulations, and codes thereof pertaining to Maintenance of Traffic (MOT) on public streets, detour of traffic, traffic control and other provisions as may be required for this Project.

Maintenance of Traffic (MOT)

The Contractor shall be fully responsible for the MOT on public streets, detour of traffic (including furnishing and maintaining regulatory and informative signs along the detour route), traffic control, and other provisions, throughout the Project, as required by the Manual of Uniform Traffic Control Devices (MUTCD), and FDOT Roadway and Bridge Standard Index drawing Book. Traffic shall be maintained according to corresponding

typical traffic control details as outlined in the previous noted standards. No street shall be completely blocked, nor blocked more than one-half at any time, keeping the other one-half open for traffic, without specific approval.

If required by the Project Manager or Consultant, Traffic Division or FDOT or as otherwise authorized by the Project Manager or Consultant, the Contractor shall make arrangements for the employment of uniformed off-duty policemen to maintain and regulate the flow of traffic through the work area. The number of men required and the number of hours on duty necessary for the maintenance and regulation of traffic flow shall be provided by the Town of Medley Police Department.

The Contractor shall provide all barricades with warning lights, necessary arrow boards and signs, to warn motorists of the Work throughout the Project. Adequate approved devices shall be erected and maintained by the Contractor to detour traffic.

Excavated or other material stored adjacent to or partially upon a roadway pavement shall be adequately marked for traffic safety at all times. The Contractor shall provide necessary access to all adjacent property during construction.

The Contractor shall be responsible for the provision, installation and maintenance of all MOT and safety devices, in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) and FDOT Roadway and Bridge Standards index drawing book. In addition, the Contractor shall be responsible for providing the Consultant with MOT plans for lane closures and/or detours for approval. These plans (sketches) shall be produced, signed and sealed by a professional Engineer registered in the State of Florida, employed by the Contractor and certified under FDOT Procedure NPIL No. 625-010-010.

Where excavations are to be made in the vicinity of signalized intersections, attention is directed to the fact that vehicle loop detectors may have been embedded in the pavement. Verify these locations by inspecting the site of the Work and by contacting the Sunshine State One-Call Center (1-800-432-4770), 48 hours prior to any excavation. Any loop detector which is damaged, whether shown on the Plans or not, shall be repaired or replaced to the satisfaction of the Miami-Dade County Signs and Signal Division (Phone No. 305-592-3470).

Where applicable, the Contractor shall notify the Traffic Division 24 hours in advance of the construction date or 48 hours in advance of construction within any signalized intersection. Temporary pavement will be required over all cuts in pavement areas, and also where traffic is to be routed over swale or median areas. When the temporary pavement for routing traffic is no longer necessary, it shall be removed and the swale or median areas restored to their previous condition.

Pavement markings damaged during construction shall be remarked, as required by the Traffic Division.

Maintenance of Traffic for Bypass Pumping

The Contractor shall take appropriate steps to ensure that all temporary pumps, piping and hoses are protected from vehicular traffic and pedestrian traffic.

Lane Closures

Where construction of the Project shall involve lane closures public streets, the following shall apply:

Lane closures require a Lane Closure Permit, obtained two weeks prior to planned construction, with a minimum 48-hour prior notice to local police and emergency departments (some police jurisdictions may require considerably more notice). Lane closures of a one day or less duration will generally not be approved for major collector streets or for arterial streets during the hours of 7am to 9am and 4pm to 6pm weekdays.

79. Location and Damage to Existing Facilities, Equipment or Utilities

As far as possible, all existing utility lines in the Project(s) area(s) will be shown on the plans. However, Town does not guarantee that all lines are shown, or that the ones indicated are in their true location. It shall be the Contractor's responsibility to field verify all underground and overhead utility lines or equipment affecting or affected by the Project. No additional payment will be made to the Contractor because of discrepancies in actual and plan location of utilities, and damages suffered as a result thereof.

The Contractor shall notify each utility company involved at least fourteen (14) calendar days prior to the start of construction to arrange for positive underground location, relocation or support of its utility where that utility may be in conflict with or endangered by the proposed construction. Relocation of water mains or other utilities for the convenience of the Contractor shall be paid by the Contractor. All charges by utility companies for temporary support of its utilities shall be paid for by the Contractor. All costs of permanent utility relocation to avoid conflict shall be the responsibility of the utility company involved. No additional payment will be made to the Contractor for utility relocations, whether or not said relocation is necessary to avoid conflict with other lines. The Contractor shall schedule the Work in such a manner that the Work is not delayed by the utility providers relocating or supporting their utilities. The Contractor shall coordinate its activities with any and all public and private utility providers occupying the right-of-way. No compensation will be paid to the Contractor for any loss of time or delay.

All overhead, surface or underground structures and utilities encountered are to be carefully protected from injury or displacement. All damage to such structures is to be completely repaired within a reasonable time; needless delay will not be tolerated. The Town reserves the right to remedy such damage by ordering outside parties to make such repairs at the expense of the Contractor. All such repairs made by the Contractor are to be made to the satisfaction of the utility owner. All damaged utilities must be replaced or fully repaired. All repairs are to be inspected by the utility owner prior to backfilling

80. Stop Work Order

The Town may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the Work for a period of up to ninety (90) days (or any lesser period), commencing no sooner than the date the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically

identified as a "Stop Work Order" issued pursuant to this paragraph. Within the period of ninety (90) days (or the lesser period specified) after a Stop Work Order is delivered to the Contractor, or within any extension to which the parties have agreed the Town shall either: Cancel the Stop Work Order; or Terminate the Work covered by such order as provided in Article 87, Termination for Convenience.

If a Stop Work Order issued under this Article is canceled or the period of the order or any extension thereof expires, the Contractor shall resume the Work without compensation to the Contractor for such suspension other than extending the time for Substantial Completion to the extent that, in the opinion of the Project Manger or Consultant, the Contractor may have been delayed by such suspension. In the event the Project Manger or Consultant determines that the suspension of Work was necessary due to Contractor's defective or incorrect Work, unsafe Work conditions caused by the Contractor or any other reason caused by Contractor's fault or omission, the Contractor shall not be entitled to an extension of time as a result of the issuance of a Stop Work Order.

81. Hurricane Preparedness

During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning, the Contractor, at no cost to the Town, shall take all precautions necessary to secure the Project site in response to all threatened storm events, regardless of whether the Project Manager or Consultant has given notice of same. Compliance with any specific hurricane warning or alert precautions will not constitute additional work.

Suspension of the Work caused by a threatened or actual storm event, regardless of whether the Town has directed such suspension, will entitle the Contractor to additional Contract time as non-compensable, excusable delay, and shall not give rise to a claim for compensable delay.

82. Use of Completed Portions

Town shall have the right, at its sole option, to take possession of and use any completed or partially completed portions of the Project(s). Such possession and use shall not be deemed an acceptance or beneficial use or occupancy of any of the Work not completed in accordance with the Contract Documents. If such possession and use increases the cost of or delays the Work, Contractor shall be entitled to reasonable extra compensation, or reasonable extension of time or both, as determined by Project Manager or Consultant. In the event Town takes possession of any completed or partially completed portions of the Project, the following shall occur:

Town shall give notice to Contractor in writing at least thirty (30) calendar days prior to Town's intended occupancy of a designated area.

Contractor shall complete to the point of Substantial Completion the designated area and request inspection and issuance of a Certificate of Substantial Completion from Project Manager or Consultant.

Upon Project Manager or Consultant's issuance of a Certificate of Substantial Completion, Town will assume full responsibility for maintenance, utilities, subsequent damages of Town and public, adjustment of insurance coverage's and start of warranty for the occupied area. Contractor shall complete all items noted on the Certificate of Substantial Completion within the time specified by Project Manager or Consultant on the Certificate of Substantial Completion, as specified in the Punch List and request final inspection and final acceptance of the portion of the Work occupied. Upon completion of final inspection and receipt of an application for final payment, Project Manager or Consultant shall issue a Certificate of Final Payment relative to the occupied area.

If Town finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by Town and Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

83. Cleaning Up: Town's Right to Clean Up

Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of a Project(s), Contractor shall remove all its waste materials and rubbish from and about the Project(s) as well as its tools, construction equipment, machinery and surplus materials. If Contractor fails to clean up during the prosecution of the Work or at the completion of the Work, Town may do so and the cost thereof shall be charged to Contractor. If a dispute arises between Contractor and separate contractors as to their responsibility for cleaning up, Town may clean up and charge the cost thereof to the contractors responsible therefore as the Project Manager and/or Consultant shall determine to be just. All combustible waste materials shall be removed from the Project(s) at the end of each day. Cleaning operations should be controlled to limit dust and other particles adhering to existing surfaces.

84. Removal of Equipment

In case of termination of this Contract before completion for any cause whatsoever, Contractor, if notified to do so by Town, shall promptly remove any part or all of Contractor's equipment and supplies from the property of Town. If the Contractor does not comply with Town's order, the Town shall have the right to remove such equipment and supplies at the expense of Contractor.

85. Set-offs, Withholdings, and Deductions

The Town may set-off, deduct or withhold from any payment due the Contractor, such sums as may be specifically allowed in the Contract or by applicable law including, without limitation, the following:

Any amount of any claim by a third party;

Any Liquidated Damages, and/or;

Any unpaid legally enforceable debt owed by the Contractor to the Town.

The Town shall notify the Contractor in writing of any such withholdings.

Any withholding, which is ultimately held to have been wrongful, shall be paid to the Contractor in accordance with the Local Government Prompt Payment Act.

86. Event of Default

An event of default shall mean a breach of the Contract or by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include but not limited to, the following:

The Contractor has not performed the Work in a timely manner;

The Contractor has refused or failed, except in case for which an extension of time is provided, to supply properly skilled staff or provided sufficient quantities of staff to perform the Work;

The Contractor has failed to make prompt payment to Subcontractors or suppliers for any services or materials they have provided;

The Contractor has become insolvent or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;

The Contractor has failed to obtain the approval of the Town where required by the Contract Documents;

The Contractor has failed in the representation of any warranties stated herein;

When, in the opinion of the Town, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Work, the Town shall notify the Contractor in writing that it must, within the time frame set forth in the Town's request, provide adequate assurances and a plan of action to the Town, in writing, of the Contractor's ability to perform in accordance with the terms of the Contract Documents. In the event that the Contractor fails to provide to the Town the requested assurances within the prescribed time frame, the Town may:

Treat such failure as a repudiation of the Contract and/or;

Resort to any remedy for breach provided herein or by law, including but not limited to, taking over the performance of the Work or any part thereof either by itself or through others.

In the event the Town may, at its sole discretion terminate the Contract for default, the Town or its designated representatives may immediately take possession of all applicable documentation and data.

Where the Town erroneously terminates the Contract or for default, the terminations shall be converted to a Termination for Convenience, and the Contractor shall have no further recourse of any nature for wrongful termination.

87. Notice of Default-Opportunity to Cure

In the event that the Town determines that the Contractor is in default of their obligations under the Contract, the Town may at its sole discretion notify the Contractor, specifying the basis for such default, and advising the Contractor that such default must be cured within a specified time frame or the Contract with the Town may be terminated. The Town is under no obligation to issue such notification. The Town may grant an extension to the cure period if the Town deems it appropriate and in the best interest of the Town, without waiver of any of the Town's rights hereunder. The Town, at its sole discretion, may have a default corrected by its own forces or another contractor and any such costs incurred will be deducted from any sums due the Contractor under any contract with the Town.

88. Termination for Default

If Contractor fails to comply with any term or condition of the Contract Documents, or fails to perform any of its obligations hereunder, then Contractor shall be in default. Upon the occurrence of a default hereunder which is not cured within the time specified to cure the default if one has been granted by the Town, the Director in addition to all remedies available to it by law, may immediately, upon written notice to Contractor, terminate this Contract whereupon any advances for which Work has not been performed, paid by the Town to Contractor while Contractor was in default shall be immediately returned to the Town. The Director may also suspend any payment or part thereof or order a Work stoppage until such time as the issues concerning compliance are resolved. Contractor understands and agrees that termination of this Contract under this Article shall not release Contractor from any obligation accruing prior to the effective date of termination. A finding of default and subsequent termination for cause may include, without limitation, any of the following:

Contractor fails to obtain the insurance or bonding herein required by the Contract.

Contractor fails to comply with any of its duties under the Contract Documents, with any terms or conditions set forth in this Contract, beyond any specified period allowed to cure such default.

Contractor fails to commence the Work within the timeframes provided or contemplated herein, or fails to complete the Work in a timely manner as required by the Contract.

If this Contract is terminated for default and the Town has satisfied its obligations under the Contract Documents the Town is granted by the Contractor full use of the Work and any Work Product in connection with the Town's completion and occupancy of the Project.

Where it has been determined that the Contractor has been erroneously terminated under this Article, such termination shall be deemed to have been occurred under Article 87, Termination for Convenience. The Town in its sole discretion may terminate the Contract without providing the Contractor a written Notice to Cure.

89. Remedies in the Event of Termination for Default

If a Termination for Default occurs, the Contractor and the bond provider,(if applicable) shall be notified of the effective date of the termination and shall be liable for all damages resulting from the default, including but not limited to re-procurement costs and other direct damages

The Contractor shall stop Work as of the date of notification of the termination and immediately remove all labor, equipment and materials (not owned or paid for by the Town) from the Work Site. The Town assumes no liability for the Contractor's failure to remove such items from the Project(s) site(s) as required.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default.

As an alternative to termination, the Town may bring suit or proceedings for specific performance or for an injunction

90. Termination for Convenience

In addition to cancellation or termination as otherwise provided for in the Contract, the Town may at any time, in its sole discretion, with or without cause, terminate the Contract by written notice to the Contractor. Such Written Notice shall state the date upon which Contractor shall cease all Work under the Contract and vacate the Project(s) site(s).

The Contractor shall, upon receipt of such notice, unless otherwise directed by the Town: Stop all Work on the Project(s) on the date specified in the notice ("the Effective Date"); Take such action as may be necessary for the protection and preservation of the Town's materials and property;

Cancel all cancelable orders for materials and equipment;

Assign to the Town and deliver to the site, or any other location specified by the Project Manager, any non-cancelable orders for materials and equipment that can not otherwise be used except for Work under the Contract and have been specifically fabricated for the sole purpose of the Work and not incorporated in the Work;

Take no action that shall increase the amounts payable by the Town under the Contract Documents; and

Take reasonable measures to mitigate the Town's liability under the Contract Documents.

All charts, sketches, studies, drawings, reports and other documents, including electronic documents, related to Work authorized under the Contract, whether finished or not, must be turned over to the Town. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by Contractor until all documentation is delivered to the Town.

In the event that the Town exercises its right to terminate the Contract pursuant to the Contract Documents, the Town will pay the Contractor:

For the actual cost or the fair and reasonable value, whichever is less, of (1) the portion of the Project(s) completed in accordance with the Contract through the completion date, and (2) non-cancelable material(s) and equipment that is not of any use to the Town except in

the performance of the Contract, and has been specifically fabricated for the sole purpose of the Contract but not incorporated in the Work; and
To the extent practical, the fair and reasonable value shall be based on the price established as a result of the Contract. In no event, shall any payments under this Paragraph exceed the maximum cost set forth in the Contract.
The amount due hereunder may be offset by all payments made to the Contractor.
All payments pursuant to this Article shall be accepted by the Contractor in full satisfaction of all claims against the Town arising out of the termination including, Further, the Town may deduct or set off against any sums due and payable under this Article any claims it may have against the Contractor.
Contractor shall not be entitled to lost profits, overhead or consequential damages as a result of a Termination for Convenience.
All payments made under the Contract are subject to audit
Upon the Town's payment in full of the amounts due the Contractor under this Article the Contractor grants the Town full use of the Work and any Work Product to complete the Project and subsequently occupy the Project.

91. Resolution of Disputes

Contractor understands and agrees that all disputes between it and the Town based upon an alleged violation of the terms of this Agreement by the Town shall be submitted for resolution in the following manner.
The initial step shall be for the Contractor to notify the Project Manager in writing of the claim or dispute and submit a copy to the Town of Medley personnel identified in Article 4, Notices.
Should the Contractor and the Project Manager fail to resolve the dispute the Contractor shall submit their dispute in writing, with all supporting documentation, to the Assistant Director-Contracts, as identified in Article 4, Notices. Upon receipt of said notification the Assistant Director-Contracts shall review the issues relative to the claim or dispute and issue a written finding.
Should the Contractor and the Assistant Director-Contracts fail to resolve the dispute the Contractor shall submit their dispute in writing within five (5) calendar days to the Director. Failure to submit such appeal of the written finding shall constitute acceptance of the finding by the Contractor. Upon receipt of said notification the Director shall review the issues relative to the claim or dispute and issue a written finding.
Contractor must submit any further appeal in writing within five (5) calendar days to the Town Manager. Failure to submit such appeal of the written finding shall constitute acceptance of the finding by the Contractor. Appeal to the Town Manager for his/her resolution, is required prior to Contractor being entitled to seek judicial relief in connection therewith. Should the amount of compensation hereunder exceed \$100,000, the Town Manager's decision shall be approved or disapproved by the Town Council. Contractor shall not be entitled to seek judicial relief unless:
it has first received Town Manager's written decision, approved by the Town Council if applicable, or a period of sixty (60) days has expired after submitting to the Town Manager

a detailed statement of the dispute, accompanied by all supporting documentation, or a period of (90) days has expired where Town Manager's decision is subject to Town Council for approval; or

Town has waived compliance with the procedure set forth in this Article by written instrument(s) signed by the Town Manager.

In the event the determination of a dispute under this Article is unacceptable to either party hereto, the party objecting to the determination must notify the other party in writing within fourteen (14) calendar days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract price or Contract time adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) calendar days after Final Completion of the Work, the parties shall participate in mediation to address all objections to any determinations hereunder and to attempt to prevent litigation. The mediator shall be mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. A party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this Article.

92. Mediation-Waiver of Jury Trial

In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the construction of a Project(s), and/or following the completion of the Project(s), the parties to this Contract agree all unresolved disputes between them shall be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in Miami-Dade County, State of Florida. The parties will share the costs of a certified Mediator on a 50/50 basis. The Contractor agrees to include such similar contract provisions with all Sub-Contractors retained for the Work, thereby providing for non-binding mediation as the primary mechanism for dispute resolution.

In an effort to expedite the conclusion of any litigation the parties voluntarily waive their right to jury trial or to file permissive counterclaims in any action arising under this Contract.

93. Town May Avail Itself of All Remedies

The Town may avail itself of each and every remedy herein specifically given to it now or existing at law or in equity, and each and every such remedy shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the Town. The exercise or the beginning of the exercise, of one remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, of any other remedy. The Town's rights and remedies as set forth in the Contract Documents are not exclusive and are in addition to any other rights and remedies in law or in equity.

94. Permits, Licenses and Impact Fees

Pursuant to the Public Bid Disclosure Act, each license, permit or fee **REQUIRED BY THE TOWN AND PAYABLE TO THE TOWN** by virtue of this construction as part of the Contract is waived as follows:

Town's Master Permit Fee and applicable Major Trade Permit fees (i.e. Mech., Plumbing, Elec., & Fire) are waived. Any other permit fees not directly related to the actual construction of the Project(s) (i.e. Permits for dumpsters, job trailers) are not waived"..."Licenses, permits and fees which may be required by Miami-Dade County, the State of Florida, or other governmental entities are not waivable."

Except as otherwise provided within the Contract Documents, all permits and licenses required by federal, state or local laws, rules and regulations necessary for the prosecution of the Work undertaken by Contractor pursuant to the Contract Documents shall be secured and paid for by Contractor. It is Contractor's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the Work to be performed and valid for the jurisdiction in which the Work is to be performed for all persons working on the Project(s) for whom a Certificate of Competency is required.

Impact fees levied by the Town and/or Miami-Dade County shall be paid by Contractor. Contractor shall be reimbursed only for the actual amount of the impact fee levied by the public entity as evidenced by an invoice or other acceptable documentation issued by the public entity. Reimbursement to Contractor in no event shall include profit or overhead of Contractor.

95. Compliance with Applicable Laws

The Contractor shall comply with the most recent editions and requirements of all applicable laws, regulations, and building and construction codes of the Federal government, the State of Florida, the County, and the Town.

The attention of the Contractor is directed to the requirements of the Florida Building Code and the Codes of Miami-Dade County and the Town of Medley, Florida, governing the qualifications for Contractor and Sub-Contractor doing business anywhere in the Town.

96. Independent Contractor

The Contractor is engaged as an independent business and agrees to perform Work as an independent contractor. In accordance with the status of an independent contractor, the Contractor covenants and agrees that the Contractor will conduct business in a manner consistent with that status, that the Contractor will not claim to be an officer or employee of the Town for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: worker's compensation coverage; unemployment insurance benefits; social security coverage; retirement membership, or credit.

The Contractor's staff shall not be employees of the Town, and the Contractor alone shall be responsible for their Work, the direction thereof, and their compensation and benefits of any kind. Nothing in the Contract shall impose any liability or duty on the Town on account

of the Contractor's acts, omissions, liabilities or obligations of those of any person, firm, company, agency association, corporation, or organization engaged by the Contractor as a subcontractor, expert, consultant, independent contractors, specialist, trainee, employee, servant or agent or for taxes of any nature, including, but not limited to: unemployment insurance; worker's compensation and anti-discrimination, or workplace legislation of any kind. The Contractor hereby agrees to indemnify and hold harmless the Town against any such liabilities, even if they arise from actions directed or taken by the Town.

97. Third Party Beneficiaries

Neither Contractor nor Town intends to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a claim against either of them based upon this Contract. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Contract

98. Successors and Assigns

The performance of this Contract shall not be transferred pledged, sold, delegated or assigned, in whole or in part, by the Contractor without the written consent of the Town. It is understood that a sale of the majority of the stock or partnership shares of the Contractor, a merger or bulk sale, an assignment for the benefit of creditors shall each be deemed transactions that would constitute an assignment or sale hereunder requiring prior Town approval.

Any transference without Town approval shall be cause for the Town to nullify this Contract. Any assignment without the Town's consent shall be null and void. The Contractor shall have no recourse from such cancellation. The Town may require bonding, other security, certified financial statements and tax returns from any proposed assignee and the execution of an assignment/ assumption agreement in a form satisfactory to the Town Attorney as a condition precedent to considering approval of an assignment.

The Contractor and the Town each binds one another, their partners, successors, legal representatives and authorized assigns to the other party of this Contract and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

99. Materiality and Waiver of Breach

Town and Contractor agree that each requirement, duty, and obligation set forth in this Contract Documents is substantial and important to the formation of the Contract Documents and, therefore, is a material term hereof.

Town's failure to enforce any provision of the Contract Documents shall not be deemed a waiver of such provision or modification of the Contract Documents. A waiver of any breach of a provision of the Contract Documents shall not be deemed a waiver of any

subsequent breach and shall not be construed to be a modification of the terms of the Contract Documents.

100. Severability

In the event the any provision of the Contract Documents is determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Contract, and the remainder of the Contract Documents shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of either party, such party may elect, at its option, to terminate the Contract in its entirety. An election to terminate the Contract based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.

101. Applicable Law and Venue of Litigation

This Contract shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

102. Amendments

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Contract and executed by the Town Manager, Director or designee.

103. Entire Agreement

The Contract Documents, as they may be amended from time to time, represent the entire and integrated Contract between the Town and the Contractor and supersede all prior negotiations, representations or agreements, written or oral. This Contract may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of the Contract Documents shall not be deemed to be a waiver of any other breach of any provision of the Contract Documents.

104. Nondiscrimination, Equal Employment Opportunity, and Americans with Disabilities Act

Contractor shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Contractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by

Town, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Contractor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

Contractor's decisions regarding the delivery of services under the Contract Documents shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

105. Evaluation

Contractor acknowledges that upon completion of the of the Work under the Contract Documents and/or at any other time deemed appropriate by the Town a performance evaluation report will be completed by the Town. A copy of each performance evaluation shall also be forwarded to the Contractor. The performance evaluations will be kept in Town files for evaluation on future solicitations.

106. Commodities manufactured, grown, or produced in the Town of Medley, Miami-Dade County and the State of Florida

Whenever two or more competitive sealed bids are received, one or more of which relates to commodities manufactured, grown, or produced within the Town of Medley, Miami-Dade County and the State of Florida, and whenever all things stated in such received bids are equal with respect to price, quality, and service, the commodities manufactured, grown, or produced within the Town of Medley, Miami-Dade County and the State of Florida shall be given preference.

107. Royalties and Patents

All fees, royalties, and claims for any invention, or pretended inventions, or patent of any article, material, arrangement, appliance, or method that may be used upon or in any manner be connected with the construction of the Work or appurtenances, are hereby included in the prices stipulated in the Contract for said Work.

108. Continuation of the Work

Any Work that commences prior to and will extend beyond the expiration date of the current contract period shall, unless terminated by mutual written agreement between the Town and the involved contractor, continue until completion at the same prices, terms and conditions.

109. Review of Records

Town shall have the right to inspect and copy, at Town's expense, the books and records and accounts of Contractor which relate in any way to the Project(s), and to any claim for additional compensation made by Contractor, and to conduct an audit of the financial and accounting records of Contractor which relate to a Project(s) and to any claim for additional compensation made by Contractor including but not limited to all payroll records, invoices for materials, and books of accounts. Such records shall conform to Generally Accepted Accounting Principles requirements (GAAP), and shall only address those transactions related to the Contract.

Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept in accordance with such statute. Otherwise Contractor shall retain and make available to Town all such books and records and accounts, financial or otherwise, which relate to the Project(s) and to any claim for a period of five (5) years following Final Completion of the Project(s).

The Contractor agrees to maintain an accounting system that provides for accounting records that are supported with adequate documentation and adequate procedures for determining allowable costs.

Contractors shall develop the proper forms and reports acceptable to the Town for the administration and management of the Contract Documents.

110. No Interest

Any monies not paid by Town when claimed to be due to Contractor under the Contract Documents, including, but not limited to, any and all claims for damages of any type, shall not be subject to interest including, but not limited to prejudgment interest. However, the provisions of Section 218.74(4), Florida Statutes as such relates to the payment of interest, shall apply to valid and proper invoices.

111. Payments Related to Guaranteed Obligations

The Town may withhold from any payments to be made such sums as may reasonably be necessary to ensure completion of the Project(s) with respect to defective Work, equipment or materials which may be identified by the Project Manager.

The Town may deduct from any payment due the Contractor an amount equal to its cost incurred on account of the Contractor's failure to fully perform its obligations under the Contract.

The Project Manager, prior to withholding or deducting any monies hereunder, shall give the Contractor notice of the defective Work, equipment or material and the basis for the withholding or deduction.

Upon the Project Manager's determination that the Contractor has fulfilled its obligations, the Town will pay the Contractor any monies owed, subject to Contractor's submission of,

or compliance with, any remaining documentation or obligation, as the case may be, in accordance with the Contract Documents

112. Consent of Town Required for Subletting or Assignment

If the Contractor assigns, transfers, sublets or otherwise disposes of the Contract or its right, title or interest in or to the same or any part thereof without the previous consent in writing of the Town, such action shall be an Event of Default. Nothing herein shall either restrict the right of the Contractor to assign monies due to, or to become due or be construed to hinder, prevent or affect any assignment by the Contractor for the benefit of its creditors, made pursuant to applicable law.

113. Agreement Limiting Time in Which to Bring Action Against the Town

In the event the Contractor may be deemed to have a cause of action against the Town, no action shall lie or be maintained by the Contractor against the Town upon any claim arising out of or based upon the Contract Documents by reason of any act or omission or requirement of the Town or its agents, unless such action shall be commenced within six (6) months after the date of issuance of a final payment under the Contract, or if final payment has not been issued within six (6) months of substantial completion of the Work or upon any claim relating to monies required to be retained for any period after the issuance of the said certificate, unless such action is commenced within six (6) months after such monies become due and payable under the terms of the Contract Documents, or if the Contract is terminated or declared abandoned under the provisions of the Contract unless such action is commenced within six (6) months after the date of such termination or declaration of abandonment by the Town.

114. Defense of Claims

Should any claim be made or any legal action brought in any way relating hereto or to the Work hereunder, except as expressly provided herein, the Contractor shall diligently render to the Town, after additional compensation is mutually agreed upon, any and all assistance which the Town may require of the Contractor.

115. Contingency Clause

Funding for this Contract is contingent on the availability of funds and continued authorization for program activities and the Contract is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days notice.

116. Mutual Obligations

This document, change order, field directive, and written clarifications issued under the Contract, and the Contractor's submittals, shall constitute the Contract Documents between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by their duly authorized representatives.

Nothing in the Contract shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

In those situations where the Contract Documents imposes an indemnity obligation on the Contractor, the Town, may at its expense, elect to participate in the defense of the claim if the Town should so choose. Furthermore, the Town may, at its own expense, defend or settle any such claim if the Contractor fails to diligently defend such claim, and thereafter seek indemnity for such cost from the Contractor.

117. Contract Extension

The Town reserves the right to exercise its option to extend the Contract for up to ninety (90) calendar days beyond the original Contract period. In such event, the Town will notify the Contractors in writing of such extensions.

118. Non-Exclusivity

It is the intent of the Town to enter into a Contract with all successful Bidders that will satisfy its needs as described herein. However, the Town reserves the right, as deemed in its best interest, to perform, or cause to be performed, the Work and services, or any portion thereof, herein described in any manner it sees fit, including but not limited to: award of other contracts, use of any contractor, or perform the Work with its own employees.

119. Nature of the Agreement

The Contractor shall provide the services set forth in the Contract Documents. The Contractor shall provide full and prompt cooperation with the Town in all aspects of the Work to be performed.

The Contractor acknowledges that the Contract Documents require the performance of all things necessary for or incidental to the effective management and performance of a Project(s). All things not expressly mentioned in the Contract Documents, but necessary to carrying out its intent are required by the Contract Documents, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.

The Contractor shall furnish all labor, materials, tools, supplies and other items required for the completion of the Contract. All Work shall be accomplished at the direction of and to the satisfaction of the Project Manager.

120. Contract Documents Contains all Terms

The Contract Documents and all documents incorporated herein by reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of the Contract Documents shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

121. Applicable Law and Venue of Litigation

This Contract shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

122. Survival

The parties acknowledge that any of the obligations in the Contract Documents will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the Town under the Contract, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration thereof.

BID FORM

Bid submittal of

(Name of Bidder)

(Address)

Submitted on: _____
(Date)

to furnish all Work as stated in the RFP and Contract Documents for the

**Repairs to Tobie Wilson Park
RFP # 2011-003**

To: Town of Medley, Florida
Attn: Michael A. Pizzi, Town Attorney
7777 N.W 72nd Avenue
Medley, Florida 33166

The undersigned, as Bidder, hereby declares that the only person or persons interested in this Bid, as principal(s) are named herein and that no other person than herein mentioned has any interest in this Bid or in the Contract to be entered into or which the Work pertains; that this Bid is made without connection with any other person, company, firm, or parties making a Bid; and that the Bid is, in all respects, made fairly and in good faith without collusion or fraud.

The Bidder further declares that it has examined the geographic location(s) of the Work, performed sufficient investigations, and informed itself fully of the suitability of the Work and all conditions pertaining to the place where the Work is to be done; that it has examined the ITB and all of the Contract Documents and all addenda thereto issued prior to Bid opening, as acknowledged in its Bid; and that it has satisfied itself about the Work to be performed; and that it has submitted the Bid Guaranty, if required; and all other required information with the Bid; and that this Bid is submitted voluntarily and willingly.

The Bidder had determined based on its business and profession expertise that the Work can be performed and completed in accordance with the Contract Documents.

The Bidder agrees, if this Bid is accepted, to timely execute a contract with the Town, pursuant to the terms and conditions of the Contract Documents and to furnish all necessary materials,

equipment, machinery, tools, apparatus, means of transportation, and all labor necessary to complete the Work.

The Bidder also agrees to furnish the required Certificate(s) of Insurance.

The undersigned further agrees that the Bid guaranty, if required, accompanying the Bid shall be forfeited if Bidder fails to execute said Contract, or fails to furnish the required Performance Bond, if required by the Contract Documents, or fails to furnish the required Certificate(s) of Insurance within fifteen (15) calendar days after being notified of the award of the Contract.

In the event of arithmetical errors, the Bidder agrees that these errors are errors which may be corrected by the Town. In the event of a discrepancy between the price Bid in figures and the price Bid in words, the price in words shall govern. Bidder agrees that any unit price listed in the Bid is to be multiplied by the stated quantity requirements in order to arrive at the extended value and the unit price shall prevail over the extended value.

Note: Bidders are bidding on a lump sum basis for the purpose of determining the lowest responsive and responsible Bidders. However, Contractors will be paid based on the line item breakdown, contained in the Bid Form, with payments based on actual Work performed.

Our **TOTAL BID PRICE** includes the total cost for the Work specified in this solicitation, consisting of furnishing all materials, labor, equipment, supervision, mobilization, overhead & profit required, in accordance with the Bid Specifications.

Total Bid Price: \$ _____

Written Amount

Firm's Name: _____

Signature: _____

Printed Name/Title: _____

Town/State/Zip: _____

Telephone No.: _____

Facsimile No.: _____ E-Mail Address: _____

Social Security No. or Federal
I.D.No.: _____

Dun and
Bradstreet No.: _____
(if applicable)

END OF SECTION