



Special Town Council Meeting

Monday, February 26, 2024 at 7:30 pm

1. CALL TO ORDER, PRAYER AND PLEDGE
2. ROLL CALL
3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES
4. PUBLIC COMMENTS

Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required)

Five (5) Minute Limit per Speaker

5. ACTION ITEMS

a. Award of Bid - ITB 24-01 Rebid 23-01 Rocky Point Road Shoreline Restoration

Exhibit: Agenda Report Number 5.a.

Attachments:

- **Agenda Report Number 5.a.** (Agenda_Report_Number_5.a..pdf)

b. Scheduled Form 6 Meeting

Exhibit: Agenda Report Number 5.b.

Attachments:

- **Agenda Report Number 5.b.** (Agenda_Report_Number_5.b..pdf)

6. PUBLIC COMMENTS

General Items (Speaker Card Required)

7. REPORTS - MAYOR AND COUNCIL MEMBERS

8. ANNOUNCEMENTS

9. ADJOURNMENT

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105).

The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact

the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

Contact: Richard W. Kohler (townclerk@townofmalabar.org 321-727-7764) | Agenda published on 02/21/2024 at 3:53 PM

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 5.a.
Meeting Date February 26, 2024

Prepared By: Lisa Morrell, Town Manager

SUBJECT: Award of Bid - ITB 24-01 Rebid 23-01 Rocky Point Road Shoreline Restoration

BACKGROUND/HISTORY:

Hurricane Nicole made landfall as a category 1 hurricane on 10 November 2022, near Vero Beach, Florida with maximum sustained winds of 75 mph. It moved through central Florida, briefly emerged in the Gulf of Mexico, and made a second landfall later that day northwest of Cedar Key in the Big Bend region.

The Town of Malabar suffered a loss of several areas of the Rocky Point Road Shoreline abutting the Indian River Lagoon as well as a collapsed section of roadway. On December 15, 2022, Federal Emergency Management Association (FEMA) approved the expansion of Public Assistance for Brevard to now include all Categories of work (A-G).

The Town Council approved the utilization of other agency contract for engineering assistance of Coastal Waterways Design & Engineering LLC on January 9, 2023. Coastal Waterways Design & Engineering developed a scope of work based on the damage and provided design, plans, and an invitation to bid (ITB) document for the Town to competitively bid the project. The engineer's estimate for this project was \$675,000.

On May 31, 2023, The Town of Malabar's application for Public Assistance was approved by FEMA; the agreement was signed and executed August 23, 2023. The ITB numbered 23-01 was finalized on November 21, 2023, and published for solicitation. The solicitation received 65 questions and the deadline to submit bids was extended to January 29, 2024. The Town received (4) bids and rejected all bids on January 30, 2024 due to a technical error related to (2) two electronically submitted bids after the opening. Specifically, one bidder was unable to upload any documents before the 10:00am deadline and confirmed by DemandStar technical support and a second bidder uploaded all their documents yet upon download the Town was able to determine the download did not provide all the uploaded documents required. Town staff was reluctant to award based on this information and re-bid the solicitation.

Town of Malabar readvertised ITB 24-01 Rebid 23-01 Rocky Point Road Shoreline Restoration Per as publicly advertised in Florida Today, Ad 9816259, on February 6, 2024. Bid Documents were posted to DemandStar and the Town's website, with all bids due by February 16, 2024 at 10:00am with a same day opening at 10:30 am. The Town Received five (5) bids in response to the solicitation broadcasted to 904 potential bidders and issued 32 bid packages for the project.

The restoration of the shoreline in four (4) specific areas of the Rocky Point Road Shoreline is necessary to prevent more erosion in these four key areas of compromised areas and additional roadway collapse and unsafe conditions for vehicular traffic. The single area of restoration of the shoreline is imperative to separately restore the collapsed section of roadway. It is important to note, the roadway repair is not included in the scope of services for award of ITB 24-01. The Town will utilize the paving services of Brevard County contract, B-6-26-70, previously approved for use by Town of Malabar Town Council on October 2, 2023.

Custom Built Marine Construction, Inc submitted the lowest bid with the submission of bid form provided by Coastal Waterways Design & Engineering LLC in the amount of \$754,600.28 based on the estimated amount of unit costs and measurements by the contractor. Any change orders must be submitted to the Town and approved by the Engineer of record, Coastal Waterways Design & Engineering LLC, to field verify any variations from the bid form submittal for the Town Council to approve as an additional expense to the project. Custom Built Marine Construction, Inc has provided an estimated completion timeframe of 150 days; less the timeframe proposed in the solicitation with a total of 270 days.

IT 24-01 included a contract for execution, a performance bond as required by FSS, and insurance requirements. In the event, the lowest bidder is not capable of executing, providing a performance bond, nor insurance requirements; Town Staff will cancel the award and award to the second lowest bidder, BDI Marine Construction, LLC with a bid form submittal totaling \$795,718.05 and 270 Days for completion for the project.

Coastal Waterways Design & Engineering LLC, recommends the award.

The FEMA PA (Public Assistance) Grant Award expires on June 13, 2024, an extension request will be required to ensure timely reporting and eligibility for reimbursement per the DR460-Z3691-Malabar Town of Subgrant Agreement for Hurricane Nicole Public Assistance.

ATTACHMENTS:

Bid Tabulation

ITB 24-01 Contract

Coastal Waterways Design & Engineering LLC Recommendation for award

FINANCIAL IMPACT:

525.3010 Rocky Point PA \$532,912

541.6400 Public Works Road Paving Balance 2/21/24, \$509,000

- Less Debt Payment due April 2024 \$70,132.22
- Transfer 541.6400 \$350,000 to 525.3010

541.6400 Ending Balance Less Obligations and Transfers Out: \$88,867.78

525.3010 Ending Balance Transfer In: \$887,912

Federal Obligation of Funding Reimbursement Estimate: \$694,308.96

Total funding of \$887,912 fund the contract award based on the bid submittal, 10% change orders, and engineering services for project closeout by engineer of record.

ACTION OPTIONS:

Motion to approve award of ITB- ITB 24-01 Rebid 23-01 Rocky Point Road Shoreline Restoration to Custom Built Marine Construction, Inc located 3119 Hammond Road, Fort Pierce, FL 34946 and authorize the Town Manager to execute a contract for construction services. Failure by the low bidder to execute a contract and all requirements within X days, the Town Manager is authorized to award contract with second lowest bidder for ITB 24-01.

Motion to transfer \$350,000 from Streets & Roads Construction in Progress fund balance to fund the shoreline restoration project and await reimbursement from FEMA to refund funding source origin, 641.6400.

**Bid Tabulation: ITB 24-01
 Invitation To Bid: 24-01 Rocky Point Road Shoreline Restoration Re-Bid**

Contractor Name Address Phone Email		Underwater Engineering Service, 3306 Enterprise Road, Fort Pierce, FL 34982 772-337-3116 aconnelly@uesi.com			Brother's Construction, Inc 6526 S. Kanner Hwy. #345, Stuart, FL 34997 772-692-9477 lyza@brothersconstructionfl.com			BDI Marine Construction, LLC 11718 SE Federal Hwy #222, Hobe Sound, FL 33455 561-909-9898 office@bdimarineandsite.com			Custom Built Marine Construction, Inc. 3119 Hammond Rd., Fort Pierce, FL 34946 772-333-2383 jr@custombuiltmarine.com			Dickerson Infrastructure, Inc dba Dickerson Florida, Inc. 3122 N 25th St, Fort Pierce, FL 34946 772-429-4444 ldale@dfiff.com		
ITEM	DESCRIPTION	UNIT COST	QUANTITY	COST	UNIT COST	QUANTITY	COST	UNIT COST	QUANTITY	COST	UNIT COST	QUANTITY	COST	UNIT COST	QUANTITY	COST
ITEM 1	INSURANCE	\$ 76,025.00	LUMP SUM	\$ 76,025.00	\$ 27,500.00	LUMP SUM	\$ 27,500.00	\$ 15,550.00	LUMP SUM	\$ 15,550.00	\$ 10,000.00	LUMP SUM	\$ 10,000.00	\$ 15,000.00	LUMP SUM	\$ 15,000.00
ITEM 2	MOBILIZATION AND DEMOBILIZATION	\$ 48,350.00	LUMP SUM	\$ 48,350.00	\$ 93,500.00	LUMP SUM	\$ 93,500.00	\$ 50,000.00	LUMP SUM	\$ 50,000.00	\$ 75,338.27	LUMP SUM	\$ 75,338.27	\$ 200,000.00	LUMP SUM	\$ 200,000.00
ITEM 3	ENVIRONMENTAL PROTECTION AND EROSION CONTROL	\$ 12,000.00	LUMP SUM	\$ 12,000.00	\$ 47,250.00	LUMP SUM	\$ 47,250.00	\$ 15,000.00	LUMP SUM	\$ 15,000.00	\$ 18,320.59	LUMP SUM	\$ 18,320.59	\$ 20,000.00	LUMP SUM	\$ 20,000.00
ITEM 4	CONSTRUCTION, PAYMENT, AND AS-BUILT SURVEYS	\$ 21,110.00	LUMP SUM	\$ 21,110.00	\$ 56,500.00	LUMP SUM	\$ 56,500.00	\$ 22,000.00	LUMP SUM	\$ 22,000.00	\$ 3,485.00	LUMP SUM	\$ 3,485.00	\$ 15,000.00	LUMP SUM	\$ 15,000.00
ITEM 5	CLEARING AND GRUBBING	\$ 45,000.00	LUMP SUM	\$ 45,000.00	\$ 82,500.00	LUMP SUM	\$ 82,500.00	\$ 32,000.00	LUMP SUM	\$ 32,000.00	\$ 39,102.97	LUMP SUM	\$ 39,102.97	\$ 46,000.00	LUMP SUM	\$ 46,000.00
ITEM 6a	EARTHWORK (CUT)	\$57	575	\$ 32,775.00	\$ 15.50	575	\$ 8,912.50	\$ 38.27	575	\$ 22,005.25	\$ 47.60	575	\$ 27,370.00	\$ 40.00	575	\$ 23,000.00
	Unit of Measurement	Per Cubic Yard	Cubic Yards		Per Cubic Yard	Cubic Yards		Per Cubic Yard	Cubic Yards		Per Cubic Yard	Cubic Yards		Per Cubic Yard	Cubic Yards	
ITEM 6b	EARTHWORK (FILL, GRADING, & COMPACTION)	\$ 105.80	1,005	\$ 106,329.00	\$ 48.25	1,005	\$ 48,491.25	\$ 80.00	1,005	\$ 80,400.00	\$ 69.93	1,005	\$ 70,279.65	\$ 37.00	1,005	\$ 37,185.00
	Unit of Measurement	Per Cubic Yard	Cubic Yards		Per Cubic Yard	Cubic Yards		Per Cubic Yard	Cubic Yards		Per Cubic Yard	Cubic Yards		Per Cubic Yard	Cubic Yards	
ITEM 7	INSTALLATION OF GEOTEXTILE	\$ 16.00	3,330	\$ 53,280.00	\$ 9.00	3,330	\$ 29,970.00	\$ 5.76	3,330	\$ 19,180.80	\$ 8.42	3,330	\$ 28,038.60	\$ 4.00	3,330	\$ 13,320.00
	Unit of Measurement	Per Square Yard	Square Yards		Per Square Yard	Square Yards		Per Square Yard	Square Yards		Per Square Yard	Square Yards		Per Square Yard	Square Yards	
ITEM 8	INSTALLATION OF REVETMENT ROCK	\$ 175.00	2,300	\$ 402,500.00	\$ 186.00	2,300	\$ 427,800.00	\$ 180.00	2,300	\$ 414,000.00	\$ 171.24	2,300	\$ 393,852.00	\$ 155.00	2,300	\$ 356,500.00
	Unit of Measurement	Per Ton	Tons		Per Ton	Tons		Per Ton	Tons		Per Ton	Tons		Per Ton	Tons	
ITEM 9	INSTALLATION OF TOE ROCK	\$ 174.00	400	\$ 69,600.00	\$ 175.00	400	\$ 70,000.00	\$ 266.23	400	\$ 106,492.00	\$ 175.51	400	\$ 70,204.00	\$ 180.00	400	\$ 72,000.00
	Unit of Measurement	Per Ton	Tons		Per Ton	Tons		Per Ton	Tons		Per Ton	Tons		Per Ton	Tons	
ITEM 10	REMOVAL AND RE-PLACEMENT OF EXISTING 1-FOOT DIAMETER, OR GREATER, SIZED COQUINA OR GRANITE AS IDENTIFIED BY ENGINEER	\$ 145.00	80	\$ 11,600.00	\$ 117.00	80	\$ 9,360.00	\$ 35.00	80	\$ 2,800.00	\$ 146.64	80	\$ 11,731.20	\$ 37.00	80	\$ 2,960.00
	Unit of Measurement	Qty Each	Rocks Each		Qty Each	Rocks Each		Qty Each	Rocks Each		Qty Each	Rocks Each		Qty Each	Rocks Each	
ITEM 11	INSTALLATION AND ESTABLISHMENT OF SOD	\$ 0.75	18,100	\$ 13,575.00	\$ 1.50	18,100	\$ 27,150.00	\$ 0.90	18,100	\$ 16,290.00	\$ 0.38	18,100	\$ 6,878.00	\$ 0.32	18,100	\$ 5,792.00
	Unit of Measurement	Per Square Foot	Per Square Feet		Per Square Foot	Per Square Feet		Per Square Foot	Per Square Feet		Per Square Foot	Per Square Feet		Per Square Foot	Per Square Feet	
		TOTAL \$ 892,144.00			TOTAL \$928,933.75			TOTAL \$795,718.05			TOTAL \$ 754,600.28			TOTAL \$ 806,757.00		
Construction Completion - Calendar Days		240+60 VEP			270			270			150			90		

SECTION 0-9 CONTRACT

CONTRACT BETWEEN
TOWN OF MALABAR AND

_____ CONTRACTOR

THIS Contract, made this _____ day of _____, 20____, by and between the Town of Malabar, a political subdivision of the State of Florida, hereinafter referred to as the "TOWN," and

_____,
at _____, a _____ Corporation,
FEID Number _____, hereinafter referred to as the "CONTRACTOR."

WITNESS THAT:

WHEREAS, the Town is a political subdivision of the State of Florida; and

WHEREAS, the Town desires the services of a qualified and experienced Contractor to provide construction services; and

WHEREAS, the Town solicited on _____ and received Bids on _____ for the project called "**Rocky Point Road Shoreline Restoration**"

WHEREAS, the Contractor has responded to the Town's solicitation and the Contractor is qualified and willing to provide said services; and

WHEREAS, the Town has found the Contractor's response to be acceptable and wishes to enter into a Contract; and

WHEREAS, the Town has funds in its current fiscal year budget which are available for the funding of the Contract;

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

ARTICLE 1 - STATEMENT OF WORK

1.1 The Contractor shall furnish all equipment, tools, materials, labor, and everything necessary and shall perform the required Work in accordance with the Contract Documents for the contract entitled "**Rocky Point Road Shoreline Restoration**"

ARTICLE 2 - TERM OF THE CONTRACT

2.1 Unless extended or terminated, the period of performance of the Contract shall commence upon the effective date of the Notice to Proceed and continue for a period of **270** calendar days (inclusive of the 60-day vegetative establishment period). The Contractor shall not proceed with Work under this Contract until a Notice to Proceed is received from the Town.

ARTICLE 3 - COMPENSATION/CONSIDERATION

- 3.1 The consideration, for the full and complete performance under this Contract, shall be in the amount of \$ _____, subject only to any additions and/or deduction as provided in the Contract Documents and formally approved by the Town.

The consideration stated above is based upon the aggregate Contract price submitted to the Town, in which the aggregate amount is obtained from the summation of the total prices for each of the Bid items shown in the Bid.

ARTICLE 4 - INVOICING AND PAYMENT

- 4.1 If acceptable progress is being made, the Contractor may request partial payments on monthly estimates, based on the actual value of Work done or completed, which request may be approved and paid by the Town. All pay requests shall reference the Town's Contract Number, shall follow the same format as AIA Document G702-2017, and shall be in accordance with the terms specified in the General Conditions.
- 4.2 The Town Manager has been authorized to approve and execute change orders, totaling up to \$19,999. When change orders in total exceed \$19,999, they will be presented to the Town Council for approval at one of their regularly scheduled meetings.

ARTICLE 5 - REMEDIES

- 5.1 If either party initiates legal action, including appeals, to enforce this Contract, the prevailing party shall be entitled to recover a reasonable attorney's fee.
- 5.2 It is acknowledged that the Contractor's failure to complete the Work within the Contract Time provided by the Contract Documents, or any extension thereof granted, will cause the Town to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the Town of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the Contractor agrees that liquidated damages may be assessed and recovered by the Town as against Contractor and its Surety, in the event of delayed completion and without the Town being required to present any evidence of the amount or character of actual damages sustained by reason thereof; therefore Contractor shall be liable to the Town for payment of liquidated damages in the amount of One Thousand Five Hundred Dollars (\$1,500) for each day that Substantial Completion is delayed beyond the Contract Time as adjusted for time extensions provided by the Contract Documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Contractor shall pay them to the Town without limiting Town's right to terminate this agreement for default as provided elsewhere herein.
- 5.3 In case of any other failure to perform the Contract, the Contractor shall be liable to pay the Town any monies which are paid by the Town to any other person, firm or corporation for services rendered for the preservation or completion of the Work. These monies shall include, but are not limited to, all Engineering and Inspection fees required to oversee the completion of the Work.
- 5.4 Such liquidated damages and monies shall be chargeable to the Contractor and shall be deducted from any monies due said Contractor, or if no money is due or the amount due is insufficient to cover the amount charged, then the Contractor and their Surety shall be liable for said amount.

ARTICLE 6 - STANDARDS OF COMPLIANCE

- 6.1 The Contractor, its employees, Subcontractors, or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Contract. The Town undertakes no duty to ensure such compliance, but will attempt to advise the Contractor, upon request, as to any such laws of which it has present knowledge.
- 6.2 The Contractor hereby assures that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this Contract. The Contractor shall take all measures necessary to effectuate these assurances.
- 6.3 The laws of the State of Florida shall govern all aspects of this Contract. In the event it is necessary for either party to initiate legal action regarding this Contract, venue shall be in the Eighteenth Judicial Circuit or claims under state law and in the Middle District of Florida, Orlando Division for any claims which are justifiable in federal court.
- 6.4 The Contractor hereby warrants that he has not, during the bidding process, nor shall he, during the term of this Contract, offer to pay any officer, employee or agent of the Town, anything of value including, but not limited to gifts, loans, rewards, promises of future employment, favors or services, based on the understanding that the actions, decision or judgments of such officer, employee, or agent would be influenced thereby. For breach of this provision, the Town may terminate this Contract without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.
- 6.5 The Contractor, by its execution of this Contract, acknowledges and attests neither he, nor any of his suppliers, subcontractors, or contractors who shall perform Work which is intended to benefit the Town, is a convicted vendor or, if the Contractor or any affiliate of the Contractor has been convicted of a public entity crime, a period longer than thirty-six (36) months has passed since that person was placed on the convicted vendor list. The Contractor further understands and accepts that this Contract shall be either voidable by the Town or subject to immediate termination by the Town, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133, Florida Statutes. The Town, in the event of such termination, shall not incur any liability to the Contractor for any Work or materials furnished. The Contractor is required to submit a completed Public Entity Crime Statement with the Bid Form.

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

ARTICLE 7 - RELATIONSHIP BETWEEN THE PARTIES

- 7.1 The Contractor is an independent Contractor and is not an employee or agent of the Town. Nothing in this Contract shall be interpreted to establish any relationship, other than that of an independent Contractor, between the Town and the Contractor, its employees, agents, subcontractors, or assigns, during or after the performance of this Contract. The Contractor is free to provide similar services to others.

7.2 The Contractor shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this Contract without the prior written consent of the Town.

ARTICLE 8 - GENERAL PROVISIONS

8.1 The Contract Documents listed below, by this reference, shall become a part of this Contract as though physically attached as a part hereof and all documents in this Contract shall be interpreted together to yield the most consistent results to achieve the purpose of the project:

- a. General Conditions
- b. General Requirements
- c. Technical Specifications
- e. Project Drawings
- f. Such addenda supplementing the documents forming this Contract as are referenced to it and attached as a part of it.
- g. Bid Solicitation, Bid Form, Instructions to Bidders, Addenda, provided however, that no exceptions to the Town's specifications, whether stated or implied in the Contractor's Bid, shall be allowed **EXCEPT** as shall be itemized, listed, approved by the Town and recorded as written Addenda with the Town as a supplement to this Contract.

8.2 This Contract states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. The Contractor recognizes that any representations, statements, or negotiations made by Town staff do not suffice to legally bind the Town in a Contractual relationship unless they have been reduced to writing, approved, and signed by an authorized Town representative. This Contract, once properly executed, shall bind the parties, their assigns, and successors in interest.

8.3 This Contract may be amended only with the prior written approval of the parties.

IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this Contract on the date first written above.

Legal Form Approved

TOWN OF MALABAR

By: _____
Town Attorney

By: _____
Town Manager

Date: _____

WHEN THE CONTRACTOR IS AN INDIVIDUAL OR SOLE PROPRIETOR:

Signed, sealed, and delivered in the presence of:

Witness _____

By: _____
Signature

Witness _____

Type or Print Name

WHEN THE PRINCIPAL OPERATES UNDER A TRADE NAME OR FICTITIOUS NAME:

Signed, sealed, and delivered in the presence of:

Witness

Business Name and Address

Witness

By: _____
Signature

Type or Print Name

WHEN THE CONTRACTOR IS A LIMITED LIABILITY COMPANY:

Signed, sealed, and delivered in the presence of:

(Witness)

LLC Name and State of Organization

(Witness)

Signature of Manager or Managing Member

Type or Print Name/Title

WHEN THE PRINCIPAL IS A GENERAL OR LIMITED PARTNERSHIP:

Signed, sealed, and delivered in the presence of:

Witness

Partnership Name

Witness

By: _____
Signature of General Partner

Type or Print Name of General Partner

WHEN THE PRINCIPAL IS A CORPORATION:

ATTEST:

Secretary

Corporation Name

(Corporate Seal)

By: _____
Signature of Officer or Authorized Agent

Type or Print Name/Title

--End of Section--

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SECTION 0-10

NOTICE TO PROCEED

Dated: _____

To: _____

Project: Rocky Point Road Shoreline Restoration

In accordance with the Contract, for the above referenced project dated _____, you are hereby notified to commence Work on _____, and you are to complete the Work within **270** consecutive days (inclusive of the 60-day vegetative establishment period).

Owner: Town of Malabar

Authorized Signature: _____ Date: _____

Title: _____

ACCEPTANCE OF NOTICE

Receipt of the Notice of Proceed is hereby acknowledged by:

Authorized Signature: _____ Date: _____

Title: _____

--End of Section--

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SECTION 0-11
PERFORMANCE BOND

Town's Contract No. _____

Surety Bond No. _____

BY THIS BOND, know that _____ as Principal, herewith called Contractor, and _____, as Surety, hereinafter called Surety, are bound to the Town of Malabar, as Obligee, herein called Town, in the amount of:

_____ Dollars (\$_____) for payment of which Contractor and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written agreement entered into by Contractor and Town, the construction of the Rocky Point Road Shoreline Restoration project.

THE CONDITION OF THIS BOND is that if the Contractor:

1. Performs said Contract in accordance with its terms and conditions; and
2. Pays the Town all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that the Town sustains because of a default by Contractor under the Contract; and
3. Pays the Town any and all other amounts due the Town by Contractor because of a default by Contractor under the Contract; and
4. Perform the guarantee of all Work and materials furnished under the Contract for the time specified in the Contract:

THEN THIS BOND IS VOID, OTHERWISE, IT REMAINS IN FULL FORCE.

Any changes in or under the Contract documents and compliance or noncompliance with formalities connected with the Contract or with the changes, do not affect the Surety's obligation under this bond. Surety hereby waives notice of any alteration or extension of time made by the Town.

Dated on _____, 20____.

Contractor's Principal Business Address:

Phone: (____) _____

Town's Principal Business Address:

2725 Malabar Road
Malabar, FL 32950
Phone: (321)727-7764

WHEN THE CONTRACTOR IS AN INDIVIDUAL OR SOLE PROPRIETOR:

Signed, sealed, and delivered in the presence of:

Witness _____ By: _____
Signature
Witness _____ Type or Print Name

WHEN THE PRINCIPAL OPERATES UNDER A TRADE NAME OR FICTITIOUS NAME:

Signed, sealed, and delivered in the presence of:

Witness _____ Business Name and Address
Witness _____ By: _____
Signature
Type or Print Name

WHEN THE CONTRACTOR IS A LIMITED LIABILITY COMPANY:

Signed, sealed, and delivered in the presence of:

(Witness) _____ LLC Name and State of Organization
(Witness) _____ Signature of Manager or Managing Member
Type or Print Name/Title

WHEN THE PRINCIPAL IS A GENERAL OR LIMITED PARTNERSHIP:

Signed, sealed, and delivered in the presence of:

Witness _____ Partnership Name
Witness _____ By: _____
Signature of General Partner
Type or Print Name of General Partner

**WHEN THE PRINCIPAL IS A CORPORATION:
ATTEST:**

Secretary _____ Corporation Name
(Corporate Seal) _____ By: _____
Signature of Officer or Authorized Agent
Type or Print Name/Title

ATTEST:

(Corporate Surety)
(Surety Seal)

Business Address

(Secretary)

By: _____
(Surety)

Florida Resident Agent

(Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.)

NOTE: If both the Principal and Surety are Corporations, the respective Corporate Seals should be affixed and attached.

--End of Section--

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SECTION 0-12

PAYMENT BOND

District's Contract No. _____

Surety Bond No. _____

BY THIS BOND, know that _____ as Principal, herewith called Contractor, and _____, as Surety, hereinafter called Surety, are bound to Town of Malabar, as Oblige, herein called Town, in the amount of: _____ Dollars (\$ _____) for payment of which Contractor and Surety bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written agreement entered into by Contractor and the Town, the construction of the Rocky Point Road Shoreline Restoration.

THE CONDITION OF THIS BOND is that if the Contractor:

Promptly makes payments to all claimants as defined in Section 255.05(1), Florida Statutes, supplying Contractor with labor, material, or supplies, used directly or indirectly by Contractor in the prosecution of the Work provided for in the Contract;

THEN THIS BOND IS VOID, OTHERWISE, IT REMAINS IN FULL FORCE.

Any changes in or under the Contract documents and compliance or noncompliance with formalities, connected with the Contract or with the changes, do not affect Surety's obligation under this bond. Surety hereby waives notice of any alteration or extension of time made by the Town.

Any action instituted by a Claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2) and (10), Florida Statutes.

Dated on _____, 20__.

Contractor's Principal Business Address:

Phone: (____) _____

Town's Principal Business Address:

2725 Malabar Road
Malabar, FL 32950
Phone: (321)727-7764

WHEN THE CONTRACTOR IS AN INDIVIDUAL OR SOLE PROPRIETOR:

Signed, sealed, and delivered in the presence of:

Witness _____ Witness _____	By: _____ Signature _____ Type or Print Name
------------------------------------	---

WHEN THE PRINCIPAL OPERATES UNDER A TRADE NAME OR FICTITIOUS NAME:

Signed, sealed, and delivered in the presence of:

_____ Witness _____ Witness	_____ Business Name and Address By: _____ Signature _____ Type or Print Name
--	---

WHEN THE CONTRACTOR IS A LIMITED LIABILITY COMPANY:

Signed, sealed, and delivered in the presence of:

_____ (Witness)	_____ LLC Name and State of Organization
_____ (Witness)	_____ Signature of Manager or Managing Member _____ Type or Print Name/Title

WHEN THE PRINCIPAL IS A GENERAL OR LIMITED PARTNERSHIP:

Signed, sealed, and delivered in the presence of:

_____ Witness	_____ Partnership Name
_____ Witness	By: _____ Signature of General Partner _____ Type or Print Name of General Partner

WHEN THE PRINCIPAL IS A CORPORATION:

ATTEST:

_____ Secretary (Corporate Seal)	_____ Corporation Name By: _____ Signature of Officer or Authorized Agent _____ Type or Print Name/Title
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ATTEST:

(Corporate Surety)
(Surety Seal)

Business Address

(Secretary)

By: _____
(Surety)

Florida Resident Agent

(Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.)

NOTE: If both the Principal and Surety are Corporations, the respective Corporate Seals should be affixed and attached.

--End of Section--

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SECTION 0-13 CERTIFICATE OF SUBSTANTIAL COMPLETION

DATE OF ISSUANCE: _____

PROJECT NAME: Rocky Point Road Shoreline Restoration

OWNER: Town of Malabar

CONTRACTOR: _____

CONTRACT DATE: _____

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

To: Town of Malabar
OWNER

And to: _____
CONTRACTOR

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and that part of the Work is hereby declared to be substantially complete in accordance with the Contract Documents on:

DATE OF SUBSTANTIAL COMPLETION

A tentative list of items to be completed or corrected, prepared by Contractor and verified and amended by the Engineer is attached hereto. This list may not be all-inclusive, and failure to include any items in the tentative list does not alter the responsibility of Contractor to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by Contractor within ____ days of the above Date of Substantial Completion.

The responsibilities between Owner and Contractor for security, operation, insurance, and warranties and guarantees shall be as follows:

OWNER: _____

CONTRACTOR: _____

The following documents are attached to and made part of this Certificate: _____

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

Executed by Engineer on: _____
DATE

ENGINEER

By: _____
(Authorized Signature)

Contractor accepts this Certificate of Substantial Completion on:

(Date)

CONTRACTOR

By: _____
(Authorized Signature)

Owner accepts the Work or designated portion thereof as substantially complete and will assume full possession thereof on: _____
(Date)

Town of Malabar

OWNER

By: _____
(Authorized Signature)

--End of Section--

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SECTION 0-14

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS

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

Addenda: Written or graphic instruments issued prior to the opening of Bids that modify or interpret the Contract Documents by additions, deletions, clarifications, or corrections.

Application for Payment: The form furnished or approved by the Town which is to be used by the Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

Bid: The offer or proposal of the bidder submitted on the prescribed form setting forth the price(s) for the Work to be performed.

Bidder: Any person, firm, partnership, or corporation submitting a Bid for the Work.

Bonds: Bid, Payment, and Performance Bonds and other instruments of security, furnished by the Contractor and the Contractor's Surety in accordance with the Contract Documents.

Change Order: A written order to the Contractor, signed by the Town, authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or Contract Time issued on or after the effective date of the Contract.

Claim: A demand or assertion by one of the parties seeking, as a matter of right, an adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract.

Construction Change Directive: A written order to the Contractor, prepared by the Engineer and signed by the Town, directing a change to the Work prior to agreement on adjustment, if any, in the Contract Price or Contract Time, or both.

Contract: The written agreement between the Town and the Contractor covering the Work to be performed and other Contract Documents are made a part of the Contract.

Contract Documents: The Contract, including the Bid Solicitation, Instructions for Bidders, Contractor's Bid, Bid Bond, Payment Bond, Performance Bond, Notice of Award, Notice to Proceed, Change Order(s), General Conditions, Project Drawings, Specifications, Addenda, and all Modifications issued after the effective date of the Agreement.

Contract Price: The total monies payable by the Town to the Contractor under the Contract Documents.

Contract Time: The number of calendar days or the date stated in the Contract Documents for the completion of the Work.

Contractor: The person, firm, or corporation with whom the Town has entered into the Contract.

Day: A calendar day of twenty-four (24) hours measured from midnight to the next midnight.

Defective: Term used to describe Work that is unsatisfactory, faulty or deficient, in that it does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, referenced standard, test or approval or has been damaged prior to final acceptance.

Town: The Town of Malabar is a political subdivision of the State of Florida.

Town Observer: The Engineer, Engineer's representative, or Resident Authorized Representative.

Engineer: The person, firm, or corporation named as such in the Contract Documents.

Engineer's Contractors: A person, firm, or corporation having a Contract with the Town or the Engineer to furnish services as the Town's or Engineer's independent professional associate or contractor with respect to the Work or Project.

Effective Date of the Contract: The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

Town Manager: The person employed as the Town of Malabar or their designee.

Field Order: A written order effecting a change in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time, issued by the Engineer to the Contractor during construction.

Furnish: to provide or install complete in place.

Governing Board: The Town Council of the Town of Malabar.

Laws and Regulations: Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Liens: Liens, changes, security interest or encumbrances upon real property or personal property.

Milestone: A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

Modification: (a) A Written Amendment of the Contract Documents signed by the Town and the Contractor, (b) a Change Order or (c) a Field Order. A Modification may only be issued after Effective Date of the Contract.

Notice of Award: The written notice of the acceptance of the Bid from the Town to the successful Bidder.

Notice to Proceed: Written notice given by the Town to the Contractor fixing the date on which the Contract Time will commence to run and on which the Contractor shall start to perform the Contractor's obligations under the Contract Documents.

Partial Utilization: Use by the Town of a substantially completed part of the Work for the purpose for which it is intended prior to substantial completion of all the Work.

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

Project Drawings: The part of the Contract Documents which show largely through graphical presentation the character, extent and scope of the Work to be furnished and performed by the Contractor and which have been prepared or approved by the Engineer. Shop drawings are not Project Drawings as so defined.

Resident Project Representative: An authorized representative of the Town who is assigned to perform construction observation.

Samples: Physical examples of materials, equipment, or Workmanship that are representative of some portion of the Work and establish standards by which some portion of Work will be judged.

Shop Drawings: All drawings, diagrams, illustrations, brochures, schedules, and other data or information that are specifically prepared or assembled by the Contractor and submitted by the Contractor to illustrate some portion of the Work.

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

Subcontractor: An individual, firm, or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

Substantial Completion: The date determined by the Engineer when the construction of the Work or an expressly stipulated part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Work or stipulated part can be fully utilized for the purposes for which it is intended.

Supplier: A manufacturer, fabricator, supplier, distributor, materialman, vendor, firm, corporation, or organization having a direct contract with the Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by the Contractor or any Subcontractor.

Surety: The corporate body which is bound with the Contractor, and which engages to be responsible for the Contractor and the acceptable performance of the Work.

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

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

Work: The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

Written Amendment: A written amendment of the Contract Documents, signed by the Town and the Contractor on or after the effective Date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

Written Notice: Any written notice to any party to the Contract relative to any part of this Contract. Such notice shall be considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at the party's last given address, or as to the Contractor, delivered in person to said party or said party's authorized representative at the Project site. Email to the last given email address, and delivery by a recognized overnight delivery service shall constitute written notice. However, written notice by any means other than certified or registered mail shall not be deemed complete until received by the addressee. If email is used, it is up to the party sending the email to verify receipt by asking for a verification reply or electronic read notice.

ARTICLE 2 - CONDITIONS AFFECTING WORK

The Contractor acknowledges that he has investigated and correlated his observations with the requirements of the Contract and satisfied himself as to the conditions affecting the Work. These conditions include, but are not restricted to, those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electrical power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, and the character of equipment and facilities needed preliminary to and during prosecution of the Work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered in so far as

this information is reasonably ascertainable from an inspection of the site, including all exploratory Work done by the Town, as well as from information presented by the Project Drawings and Specifications made a part of this Contract. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the Work. The Town assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Town, its officers or employees prior to the execution of the Contract, unless such information has been stated expressly in the Contract.

ARTICLE 3 - CONTRACT DOCUMENTS

The Contract Documents comprise the entire agreement between the Town and the Contractor concerning the Work. The Contract Documents are complementary; what is called for by one is binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project. It is the intent of the Contract Documents to describe the functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials, equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as to be required to produce the intended result shall be furnished and performed whether or not specifically called for. When words and phrases that have a well-known technical or construction industry or trade meaning are used to describe Work, materials, or equipment such words or phrases shall be interpreted in accordance with that meaning. Reference to standards, 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 be implied, shall mean the latest standard, specification, manual, code, Laws, or Regulations in effect on the date of the Bid Solicitation except as may otherwise be specifically stated. However, no provision of any referenced standard, specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the Town, the Contractor or the Engineer, or any of their contractors, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the Town, the Engineer, or any of the Engineer's contractors, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents. Clarifications and interpretations of the Contract Documents shall be issued by the Engineer.

Brand names used in the Contract Documents, are intended to denote the standard of quality required for the particular material or product. The term "equal" or "equivalent," when used in connection with brand names, shall be interpreted to mean a material or product that is similar and equal in type, quality, size, composition, finish, color and other applicable characteristics to the material or product specified by trade name, and that is suitable for the same use and capable of performing the same function, in the opinion of the Engineer, as the material or product so specified. Proposed equivalent items must be approved by the Engineer before they are purchased or incorporated in the Work. When a brand name, catalog number, or other identification, is used without the phrase "or equal," the Contractor shall use the item specified. "Equivalent" or "equal" items will only be approved after the Contractor has been furnished with the Notice to Proceed.

If, during the performance of the Work, the Contractor discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or any such standard, specification, manual or code, the Contractor shall report all errors to the Engineer in writing at once and the Contractor shall not proceed with the Work affected thereby (exception in an emergency as provided for in the Contract Documents) until an amendment or supplement to the Contract Documents has been issued.

ARTICLE 4 - SPECIFICATIONS AND PROJECT DRAWINGS

The Contractor shall check all Project Drawings furnished to him immediately upon their receipt and shall promptly notify the Engineer of all errors, inconsistencies, omissions, and discrepancies. Dimensions marked on Project Drawings shall, in general, be followed in preference to scaled measurements. Anything mentioned in the Specifications and not shown on the Project Drawings; or shown on the Project Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. In the case of an inconsistency between Drawings and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Engineer's interpretation. In

case of a discrepancy either in the dimensions, in the Project Drawings, or in the Specifications, the matter shall be submitted to the Town who shall make a determination in writing. Any adjustment by the Contractor without such a determination by the Town shall be at his own risk and expense. All deviations made by the Contractor from the Specifications and Project Drawings will be compiled and provided to the Town in the form of Record Drawings (see SECTION 01 77 00 PROJECT CLOSEOUT). The Town may furnish from time to time such detail Project Drawings and other information considered necessary to clarify the Contract.

Omissions from the Project Drawings or Specifications or the misdescription of details of Work which are manifestly necessary to carry out the intent of the Project Drawings and Specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the Work as if fully and correctly described in the Project Drawings and Specifications. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency, or omission in the Contract without providing written notice to the Town, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction. Standard references used in the Specifications shall be the latest revision or edition of that reference, any such referenced paragraph, or section revised shall apply to the Work as indicated.

Notwithstanding anything to the contrary herein, Contractor shall verify the accuracy and completeness of all construction plans, design drawings and specifications and shall promptly notify Owner of any errors or omissions in same. Should the Contractor fail to report to the Owner any error, inconsistency, omission or defect in the construction plans, design drawings and specifications the Contractor assumes the liability for such defective plans, drawings and specifications.

ARTICLE 5 - CONSTRUCTION BONDS

5.1 BONDS REQUIRED

If the Contract price is in excess of two-hundred thousand dollars (\$200,000.00), the Contractor shall, within fifteen (15) calendar days after receipt of the Contract for execution, provide the Town with a payment bond and a performance bond in accordance with Florida Statutes § 255.05(1) in an amount not less than the Contract Price. The form of the payment and performance bonds shall be as provided IN SECTION 12 PERFORMANCE BOND and SECTION 13 PAYMENT BOND, with a Power of Attorney Affidavit attached. Contractor, at Contractor's Expense, shall record the Performance Bond and the Payment Bond in the Public Records of the county where the improvement is located and deliver a certified copy of each recorded bond to the Town. Contractor shall perform no work, and the Town shall not make any payment to Contractor until Contractor has delivered certified copies of the recorded bond to the Town. Failure to provide the Bond(s) with the fifteen (15) day period shall be sufficient cause for the Town to deem the Bidder non-responsive and nullify the Contract Award.

5.2 SURETIES QUALIFICATIONS

All bonds required under this Contract, including, but not by way of limitation, any Bid Bond, Payment Bond, or Performance Bond, shall be written through a reputable and responsible Surety Bond agency licensed to do business in the State of Florida and with a Surety which holds a certificate of authority authorizing it to write Surety Bonds in Florida meeting the following requirements:

BOND REQUIREMENTS FOR CONSTRUCTION CONTRACTS

CONTRACT SUM	A.M. BEST'S RATING CLASSIFICATION / OTHER REQUIREMENTS	BEST'S FINANCIAL SIZE CATEGORY
From: \$ 0.00 To: \$200,000.00	Bid or Payment Bond or Performance Bond Not Required (unless specified in Supplemental Conditions)	Not Applicable
From: \$200,000.01 To: \$500,000.00	All Bonds Required: B+ or better (See requirements under paragraph 1 below)	No Minimum Required
From: \$500,000.01 To: \$2,500,000.00	A - or better Circular 570 requirements (paragraph 2 below)	IV or larger
From: \$2,500,000.01 or more	A - or better Circular 570 requirements (paragraph 2 below)	V or larger

(1) Contract Price of five-hundred thousand dollars (\$500,000.00) or Less:

If the Contract price is five-hundred thousand dollars (\$500,000.00) or less, Bonds with a Surety company in compliance with the following requirements shall be acceptable:

- (a) The surety company is licensed to do business in the State of Florida;
- (b) The surety company holds a certificate of authority authorizing it to write Surety Bonds in the State Florida;
- (c) The surety company has twice the minimum surplus and capital required by the Florida Insurance code at the time the Bid Solicitation is issued;
- (d) The surety company is otherwise in compliance with the provisions of the Florida Insurance Code; and,
- (e) The surety company holds a currently valid certificate of authority issued by the U.S. Department of the Treasury under 31 U.S.C. ss.9304 to 9308.

In order to qualify as an acceptable Surety company under this paragraph (1), an Affidavit for Surety Company shall be executed by an Officer of the Surety Bond insurer as evidence that a Surety company complies with the foregoing requirements.

(2) Circular 570, Contract Price of \$500,000.01 or more:

If the Contract price is \$500,000.01 or greater, the Surety shall also comply with the Circular 570 requirements as set forth in this paragraph (2). The Surety shall maintain a current certificate of authority as an acceptable Surety on Federal Bonds in accordance with U.S. Department of Treasury Circular 570, current revision. If the amount of the Bond exceeds the underwriting limitations set forth in the Circular, in order to qualify, the net retention of the Surety company shall not exceed the underwriting limitation in the Circular and the excess risk must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 (3) CFR Section 223.10 - Section 223.111. Further, the surety company shall provide the Town with evidence satisfactory to the Town, that such excess risk has been protected in an acceptable manner.

5.3 ADDITIONAL OR REPLACEMENT BOND

It is further mutually agreed between the parties hereto that if, at any time, the Town shall deem the Surety or Sureties upon any Bond to be unsatisfactory, or if, for any reason, such Bond ceases to be adequate, the Contractor shall, at his expense within five (5) business days after the receipt of notice from the Town to do so, furnish an additional or replacement Bond or Bonds on the Town's standard form, amount, and with such Surety or Sureties as shall be satisfactory to the Town. In such event, no further payments to the Contractor shall be deemed due under this Contract until such new or additional security for the faithful performance of the Work shall be furnished in manner and form satisfactory to the Town.

In addition, the Contractor shall for any increases in the Contract amount automatically increase the amount of the Payment Bond and the Performance Bond to equal the revised amount of the Contract and shall provide the Town with evidence of the same.

5.4 FLORIDA RESIDENT AGENT

The Surety Company shall have a Florida resident agent whose name shall be listed in the prescribed space on the forms provided by the Town for all Bonds required by the Town.

5.5 ALTERNATIVE FORM OF SECURITY

In lieu of the Payment Bond and the Performance Bond, the Contractor may, pursuant to Section 255.05, Florida Statutes, provide an alternate form of security in the form of cash, a money order, a certified check, or an irrevocable letter of credit. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the Bond for which the alternative form of security is being substituted. The determination of the value of an alternative form of security shall be made by the Town.

ARTICLE 6 - INSURANCE REQUIREMENTS

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 the Town (or for such duration as is otherwise specified hereinafter), the insurance coverages set forth herein.

6.1 WORKERS' COMPENSATION/EMPLOYER'S LIABILITY INSURANCE

Such insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. Such insurance shall be no more restrictive than that provided by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than any endorsements required by NCCI or the State of Florida. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law. In addition, the policy(ies) must include:

The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One: "Statutory"
Part Two: \$1,000,000 Each Accident
\$1,000,000 Disease – Policy Limit
\$1,000,000 Disease – Each Employee

In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for:

- a. If any of Contractor's employees or subcontractors' (of any tier) employees will be involved in loading, unloading, building, or repairing vessels, coverage shall be included for the U.S Longshoremen & Harbor Workers Act. Such coverage shall be provided on a form no more restrictive than NCCI Form WC 00 01 06A Longshore and Harbor Workers' Compensation Act Coverage Endorsement.
- b. If any of Contractor's employees or subcontractors' (of any tier) employees will be working as the masters or crew members of any vessel, coverage shall be included for losses arising out of injuries to such employees. Such coverage is to be provided on a form no more restrictive than the latest edition of the NCCI Form WC 00 02 01B Maritime Coverage Endorsement.

In the event that Contractor provides all or a portion of the Workers' Compensation/Employers Liability insurance required herein via a professional employer organization ("PEO") or employee leasing company, any such Workers' Compensation/Employers Liability insurance provided will only be deemed acceptable solely for the purposes of insuring Contractor's enrolled employees. In addition, and notwithstanding the foregoing, in order to adequately protect the District against injuries to uninsured employees of Subcontractors and non-enrolled employees of Contractor, Contractor must still procure, maintain, and furnish Town with evidence of a stand-alone separate Workers' Compensation/Employers Liability insurance policy issued with Contractor as the named insured, and complying with all requirements for Contractor provided Workers' Compensation contained in the Agreement. It is permissible for Contractor to exclude payroll of leased employees from such separate Workers' Compensation/Employers Liability insurance policy.

The Workers' Compensation policy must be endorsed to waive the insurers right to subrogate against the Town and Town's Council Members, officers, employees and agents in the manner which would result from the attachment of the NCCI Waiver Of Our Right To Recover From Others Endorsement (Advisory Form WC 00 03 13) with the Town and the Town's Council Members, officers, employees and agents scheduled thereon.

6.2 COMMERCIAL GENERAL LIABILITY INSURANCE

Such insurance shall be on a form no more restrictive than that provided by the latest edition of the standard Commercial General Liability Form (Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office (ISO), without any restrictive endorsements other than any endorsements specifically required by ISO or the State of Florida. The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

Mold, fungus, or bacteria

Terrorism

Silica, asbestos or lead

Sexual molestation

The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

\$5,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$2,000,000	Personal and Advertising Injury
\$5,000,000	Each Occurrence

Contractor shall continue to maintain products/completed operations coverage in the amount stated above for a period of three (3) years after the final completion of the Work. The insurance shall be on a form no more restrictive than, and shall cover those sources of liability which would be covered by Coverage A of, the latest occurrence form edition of the Commercial General Liability Coverage Form (ISO Form CG 00 01), or of the occurrence Products/Completed Operations Liability Coverage Form (ISO Form CG 00 37), as filed for use in the State of Florida by ISO, without any restrictive endorsements other than those than those which, under an ISO filing, must be attached to the policy (i.e., mandatory endorsements).

Town and Town's Council Members, officers, employees, and agents shall be included as an "Additional Insured" on a form no more restrictive than ISO form CG 20 10 (Additional Insured – Owners, Lessees, or Contractor) combined with ISO form CG 20 37 (Additional Insured – Owners, Lessees or Contractors – Completed Operations).

Contractor shall cause its subcontractors to purchase and maintain commercial general liability insurance in the minimum amount of \$1,000,000, covering Town and Contractor.

6.3 BUSINESS AUTOMOBILE LIABILITY INSURANCE

Such insurance shall be provided on a form no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of the standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed. The policy shall cover all owned, non-owned, and hired autos used in connection with the performance of work under this Contract.

The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$1,000,000	Each Occurrence – Bodily Injury and Property Damage Combined
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6.4 WATERCRAFT/VESSEL LIABILITY INSURANCE

To the extent watercraft are utilized, Contractor shall purchase and maintain, or cause its subcontractors to purchase and maintain, insurance which shall, at a minimum, cover Contractor and subcontractors for injuries or damage arising out of the use of all owned, non-owned and hired watercraft. The insurance shall include the Town and Town's Council Members, officers, employees and agents "Additional Insureds".

The limits applicable to watercraft liability (inclusive of any amounts provided by an umbrella or excess policy) shall be:

Each Occurrence/Annual Aggregate \$5,000,000

6.5 POLLUTION/ENVIRONMENTAL IMPAIRMENT LIABILITY INSURANCE

Such insurance shall include clean-up costs and cover Contractor for liability resulting from pollution or other environmental impairment arising out of, or in connection with, work performed under this Contract, or which arises out of, or in connection with this Contract, including coverage for clean-up of pollution conditions and third-party bodily injury and property damage claims arising from pollution conditions. Such insurance shall also include transportation coverage and non-owned disposal site coverage. Such insurance shall be on a form acceptable to Town.

Town and Town's Council Members, officers, employees and agents shall be included as "Additional Insureds" on the policy.

Coverage must either be on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$5,000,000 Each Claim/Occurrence

\$5,000,000 Annual Aggregate

6.6 PROPERTY/BUILDER'S RISK

Contractor shall be responsible to maintain Builder's Risk and/or and Installation policy for all construction projects. The coverage limit shall be equal to 100% of the completed value of the project. Such coverage shall be written on "all-risk" including coverage for the perils of windstorm and flood. Such coverage shall be written on an "agreed value" basis and shall not be subject to a coinsurance clause. The maximum deductible for other than windstorm and flood shall be \$25,000. The maximum deductible for windstorm and/or flood shall be 2% of the value of the project at the time of the loss. Town shall be included on the policy as a Named Insured and a loss payee.

Until such insurance is no longer required by this Contract, Contractor shall provide Town with renewal or replacement evidence of insurance at least fifteen (15) days prior to the expiration or termination of such insurance.

All policies required by this Contract shall be endorsed to provide that the insurer will provide Town thirty (30) days' advance notice of any cancellation of the policy, except in cases of cancellation for non-payment of premium for which the Town shall be given ten (10) days' advance notice.

Insurers providing the insurance required by this Contract must either be: (1) authorized by a subsisting certificate of authority issued by the State of Florida to transact insurance in the State of Florida, or (2) except with respect to coverage for the liability imposed by the Florida Workers' Compensation Act, an eligible surplus lines insurer under Florida Statutes.

In addition, each such insurer shall have and maintain throughout the period for which coverage is required, a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to A. M. Best Company.

Contractor shall provide to the Town satisfactory evidence of the insurance required in the Contract within fifteen (15) calendar days after notification of award of the Contract. As evidence of compliance with the insurance required herein, Contractor shall furnish the Town with one of the following forms of acceptable evidence of insurance:

- a. 1. an appropriate Certificate of Insurance (which identifies the project) and is signed by an authorized representative of the insurer evidencing all coverage required; and
 2. a copy of the actual additional insured endorsement as issued on the policy(ies), signed by an authorized representative of the insurer(s) verifying inclusion of the Town and Town's Council Members, officers, employees and agents as additional insureds;
- b. the original of the policy(ies); or
- c. other evidence satisfactory to the Town.

The official title of the certificate holder is the Town of Malabar. This official title shall be used in all insurance documentation.

Notwithstanding the prior submission of a Certificate of Insurance, copies of endorsements, or other evidence initially acceptable to the Town, if requested by the Town, Contractor shall, within thirty (30) days after receipt of a written request from Town, provide the Town with a certified copy or certified copies of the policy or policies providing the coverage required herein. Contractor may redact or omit, or cause to be redacted or omitted, those provisions of the policy or policies which are not relevant to the insurance required herein.

The insurance provided by the Contractor shall apply on a primary basis to and shall not require contribution from any other insurance or self-insurance maintained by the Town and Town's Council Members, members, officers, employees or agents. Any insurance, or self-insurance, maintained by the Town shall be in excess of, and shall not contribute with, the insurance provided by Contractor.

Town and Contractor, each for itself and on behalf of its insurers, to the fullest extent permitted by law without voiding the insurance required hereunder, waive all rights against each other and any of their other contractors, subcontractors, agents and employees, each of the other, for damages or loss to the extent covered and paid for by any insurance maintained by the other party.

Except where prior written approval has been obtained hereunder, the insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention. Contractor shall pay on behalf of the Town and Town's Council Members, officers, employees and agents any deductible or self-insured retention applicable to a claim against the Town and Town's Council Members, officers, and employees.

The Town reserves the right, but not the obligation, to review and revise any insurance requirements at the time of contract renewal and/or any amendments, not limited to deductibles, limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work/specifications affecting the applicability of coverage.

Compliance with these insurance requirements shall not limit the liability of Contractor, its subcontractors, sub-subcontractors, employees, or agents. Any remedy provided to the Town and Town's Council Members, officers or employees by the insurance provided by Contractor or the Town shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of Contractor) available to the Town under this Contract or otherwise.

Neither approval nor failure to disapprove insurance furnished by Contractor shall relieve Contractor from the responsibility to provide insurance as required by this Contract.

ARTICLE 7 - INDEMNIFICATION

The Contractor shall indemnify and hold harmless the Town, its officers, agents, guests, invitees and employees, from all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract. The Contractor shall include substantially the same indemnification provisions in all contracts with Subcontractors.

The Contractor acknowledges that it is solely responsible for ensuring the safety of the premises to protect its employees, Subcontractors, invitees, licensees, and all other persons during the course of the Work.

ARTICLE 8 - SCHEDULES

Within ten (10) days after the Effective Date of Contract, the Contractor shall submit to the Engineer for review a preliminary progress schedule (See SECTION 01 29 00 MEASUREMENT AND PAYMENT) indicating the starting and completion dates of the various stages of the Work, including any Milestones specified in the Contract Documents.

Prior to the submission of the first Application for Payment, the Contractor shall submit a finalized progress schedule. No progress payment shall be made to the Contractor until the schedule is submitted to and acceptable to the Engineer as provided herein. The progress schedule will be acceptable to the Engineer as providing an orderly progression of the Work to completion within any specified Milestones and Contract Time, but such acceptance will neither impose on the Engineer responsibility for the sequencing, progress or scheduling of the Work nor interfere with or relieve the Contractor from full responsibility thereof. The Contractor's schedule of values will be acceptable to the Engineer as to form and substance.

ARTICLE 9 - SUPERINTENDENCE BY CONTRACTOR

The Contractor, at all times during performance and until the Work is completed and accepted, shall give their personal superintendence to the Work or have a competent superintendent at the project site, satisfactory to the Town and with authority to act for the Contractor.

9.1 PERFORMANCE OF WORK BY THE CONTRACTOR

The Contractor shall, with their own organization, perform Work equivalent to at least forty percent (40%) of the total amount of the Work, based on percentage of Contract value, to be performed under the Contract.

9.2 SUBCONTRACTORS

The Contractor is as fully responsible to the Town for the acts, coordination, and omissions of their Subcontractors and of persons, either directly employed by said Subcontractor, as they are for the acts and omissions of persons directly employed by them. The Contractor shall submit the names of the Subcontractors proposed for the Work for Town acceptance at the pre-construction meeting. The Contractor shall not substitute any Subcontractor without the prior consent of the Town. Nothing contained in the Contract shall create any Contractual relationship between any Subcontractor and the Town. All Subcontractors shall complete and submit to the Engineer a Public Entity Crime Statement.

9.3 PROHIBITION AGAINST CONTRACTING WITH SCRUTINIZED COMPANIES

In accordance with §287.135, Florida Statutes, Contractor certifies that Bidder is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and that it does not have business operations in Cuba or Syria. "Business operations" means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce. The Town may terminate the contract if Contractor is found to have submitted a false certification, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria.

ARTICLE 10 – PERMITS, COMPLIANCE WITH CLEAN AIR ACT AND FEDERAL WATER POLLUTION ACT

The Contractor shall, without additional expense to the Town, be responsible for obtaining licenses and permits and for complying with any applicable federal, state, and municipal laws, codes, and regulations in connection with the prosecution of the Work. The Town will obtain the environmental permits indicated in SECTION 01 35 43 ENVIRONMENTAL PROTECTION; the Contractor will obtain any other environmental permits.

CLEAN AIR ACT

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C §71401 et seq. 2. The contractor agrees to report each violation to the Town of Malabar and understands and agrees that the Town of Malabar will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

FEDERAL WATER POLLUTION CONTROL ACT

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq.

2. The contractor agrees to report each violation to the Town of Malabar and understands and agrees that the Town of Malabar will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

ARTICLE 11 - PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES, AND IMPROVEMENTS

The Contractor will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site of Work which is not to be removed. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by Workmen, shall be trimmed with a clean cut and painted with an approved tree-pruning compound as directed by the Town. The Contractor will protect from damage all existing improvements, Town easements, or utilities at or near the site of the Work, the location of which is made known to them, or the existence of which may be reasonably inferred from a site inspection, and will repair or restore any damage to such facilities, and shall be responsible for any interruption

of utility services, resulting from failure to comply with the requirements of this Contract or the failure to exercise reasonable care in the performance of the Work. If the Contractor fails or refuses to repair any such damage promptly, the Town may have the necessary Work performed and charge the cost thereof to the Contractor. The Contractor shall follow all requirements set forth in SECTION 01 35 43 ENVIRONMENTAL PROTECTION.

ARTICLE 12 - SAFETY

The Contractor shall be responsible for providing safe and healthful working conditions for employees of the Contractor, Subcontractors, the Town, or its invitees. The Contractor shall initiate and maintain an accident prevention program that should include, but is not limited to, the following: Establish and supervise programs for the education and training of employees in the recognition, avoidance, and prevention of unsafe conditions and acts.

The Contractor shall be responsible for providing first-aid services and medical care to all of their employees. The Contractor shall establish and maintain good housekeeping practices throughout all phases. The Contractor shall be responsible for requiring the wearing of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions.

The Town's Observer may, but is not required to, order that the Work be stopped if a condition of immediate danger exists. Nothing contained herein shall be construed to shift responsibility or risk of loss for injuries or damage sustained as a result of a violation of this section from the Contractor to the Town and the Contractor shall remain solely and exclusively responsible for compliance with all safety requirements and for the safety of all persons and property at the project site. Employees required to handle or use toxins, caustics and other harmful substances shall be instructed regarding the safe handling and use, and be made aware of the potential hazards, personal hygiene, and personal protective measures required. All Work shall meet and be in compliance with standards and regulations set forth by Occupational Safety and Health Administration (OSHA), Florida Department of Labor and Employment Security and any and all other appropriate federal, state, local or district safety and health standards including but not limited to OSHA Excavation Safety Standards as enumerated in the "Trench Safety Act" Section 553.60, Florida Statutes.

12.1 EMERGENCIES

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Town, is obligated to act to prevent threatened damage, injury, or loss. If the Contractor believes that any significant change in the Work or Contract Document have been caused thereby, prompt written notice shall be given to the Engineer. If the Engineer determines that a change in the Contract Documents is necessary due to the action taken by the Contractor in the event of the emergency, a Field Order or Change Order will be issued.

ARTICLE 13 - DIFFERING SITE CONDITIONS

Subsurface, During the progress of the Work should the Contractor encounter differing site conditions, the Contractor shall within 48 hours, and before such conditions are disturbed, deliver to the Town written notice of:

- a. submerged or latent physical conditions at the site differing materially from those indicated in this Contract, or;
- b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract.

The Engineer shall promptly investigate the conditions, and shall render a non-binding opinion as to whether such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work under this Contract, whether or not changed as a result of such conditions, and shall make a non-binding recommendation for an adjustment to the Contract Price, the Contract Time, or both. Contractor and the Town Manager shall meet and discuss the Engineer's

recommendation and shall attempt to negotiate a mutually acceptable adjustment. If the Contractor and the Town Manager reach agreement, the terms of the adjustment shall be documented by a Change Order. If the Town Manager finds that a change to the work is warranted by differing site conditions but the Contractor does not agree with the proposed adjustment to the Contract Price, Contract Time, or both, the Town Manager may issue a Construction Change Directive. During the Engineer's investigation, the Contractor shall proceed with those portions of the Work which do not disturb such conditions. Engineer shall notify Contractor in writing when Work may resume in the area of the differing site conditions. If the Contractor disagrees with the Town Manager's findings regarding the non- existence of differing site conditions or the Town Manager's proposed adjustment, if any, the Contractor may file a Claim in accordance with Section 14.6 of these General Conditions within 30 days of receipt of the Town Manager's determination.

No Claim by the Contractor for an adjustment hereunder shall be allowed if asserted after final payment under this Contract.

ARTICLE 14 – CHANGES TO THE WORK; CLAIMS

The Town may, without invalidation of the Contract, at any time, without notice to the Sureties, by Change Order or Construction Change Directive, make any change in the Work within the general scope of the Contract. The Engineer may, without invalidation of the Contract, at any time, without notice to the Sureties, by Field Order, make any change in the Work, not involving an adjustment in the Contract Price or an extension of the Contract Time, within the general scope of the Contract.

Upon receiving a Change Order, Construction Change Directive or a Field Order the Contractor will promptly proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents.

14.1 FIELD ORDERS

The Engineer may authorize minor variations in the Work from the requirements of the Contract Documents that do not involve extra cost or extension of time and are compatible with the design concept of the completed project as a functioning whole as indicated by the Contract Documents. These shall be accomplished by a Field Order and will be binding on the Town and the Contractor who shall perform the Work involved promptly. If the Town or the Contractor believes that a Field Order justifies an adjustment in the Contract Price or the Contract Time, the Town or the Contractor may make a written Claim for such an adjustment as provided in Section 14.6.

14.2 CHANGE ORDERS

The Town and the Contractor shall execute appropriate Change Orders covering:

- a) Changes in the Work where the Town and the Contractor are in agreement with:
 1. the change in the Work;
 2. the amount of the adjustment, if any, in the Contract Price; and
 3. the amount of the adjustment, if any, in the Contract Time.
- b) Changes in the Work which are required because of acceptance of defective Work or correcting defective Work;
- c) Changes in the Contract Price or Contract Time, or both, which are agreed to by the parties; and
- d) Changes in the Contract Price or Contract Time, or both, which embody the substance of any written decision rendered by the Town Council pursuant to the paragraph entitled "Claims" of these General Conditions provided that, in lieu of executing any such Change Order, an appeal may be taken from any decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, the Contractor shall carry on the Work and adhere to the progress schedule.

The Town and the Contractor will execute appropriate Change Orders prepared by the Engineer covering changes in the Work to be performed as provided in the paragraph entitled "Differing Site Conditions," and Work performed in an emergency as provided in the paragraph entitled "Emergencies" and any other Claim for a change in the Contract Time or the Contract Price which is approved by the parties.

14.3 CONSTRUCTION CHANGE DIRECTIVES

The Town may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Price and Contract Time being adjusted accordingly.

A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

If the Construction Change Directive provides for an adjustment to the Contract Price, the adjustment shall be based on one or more of the methods provided in Section 14.5.

Upon receipt of a Construction Change Directive, the Contractor shall promptly, but in no event more than ten (10) days after receipt, proceed with the change in the Work involved and advise the Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Price or Contract Time.

A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be deemed as a Change Order.

Pending final determination of the total cost of a Construction Change Directive to the Town, amounts not in dispute for such changes in the Work shall be included in applications for payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Engineer will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Price on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Section 14.6.

When the Town and Contractor agree with the determination made by the Engineer concerning the adjustments in the Contract Price and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

14.4 SURETY NOTIFICATION

It is the Contractor's responsibility to notify the Surety of any changes affecting the general scope of the Work or change in the Contract Price and the amount of the applicable bonds shall be adjusted accordingly. The Contractor will furnish proof of such adjustment to the Town.

14.5 CHANGE OF CONTRACT PRICE

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

If the Contractor wishes to make a Claim for an increase in the Contract Price, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 12.1.

If the Contractor believes that additional cost is involved for reasons including but not limited to (1) a written interpretation by the Engineer, (2) an order by the Town to stop the Work where the Contractor was not at fault, (3) a Field Order (4) failure of payment by the Town, (5) termination of the Contract by the Town, (6) Town's suspension, or (7) other reasonable grounds, a Claim shall be filed in accordance with Section

14.6.

The Contract Price may only be changed by a Change Order, Construction Change Directive or Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the Claim to the other party and to the Engineer promptly (but in no event later than ten days) after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered within thirty (30) days after the start of such occurrence or event (unless the Engineer allows additional time for Claimant to submit additional or more accurate data in support of the Claim) and shall be accompanied by Claimant's written statement that the adjustment Claimed covers all known amounts to which the Claimant is entitled as a result of said occurrence or event. All Claims for adjustment in the Contract Price shall be initially reviewed by the Engineer in accordance with the paragraphs entitled "Claims" of these General Conditions. No Claim for an adjustment in Contract Price will be valid unless submitted in accordance with this paragraph.

The value of any Work covered by a Change Order, Construction Change Directive or of any Claim for an adjustment in the Contract Price shall be determined in one of the following ways:

- a. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved;
- b. By a mutually agreed lump sum; or
- c. The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the Work plus a fixed amount (Contractor's fee) to be agreed upon but not to exceed fifteen (15%) percent of the actual cost of such Work to cover the cost of general overhead and profit.

Whenever the cost of any Work is to be determined pursuant to subparagraphs b. or c. above, the Contractor will submit in form prescribed by the Engineer an itemized cost breakdown together with supporting data.

The term Cost of the Work means the sum of all costs necessarily incurred and paid by the Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by the Town, such costs shall be in amounts no higher than those prevailing at the locality of the Project.

The Contractor, in connection with any proposal he makes for a Contract modification, shall furnish a price breakdown, itemized as required by the Town. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all materials, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all Work involved in the modification, whether such Work was deleted, added, or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore, shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Town.

14.6 CLAIMS AND CLAIMS DISPUTES

Claims must be initiated by written notice to the other party with a copy to the Engineer. The responsibility to substantiate the Claim shall rest with the party making the Claim.

Claims shall be referred initially to the Engineer for analysis and a non-binding recommendation. The Engineer shall provide his analysis and non-binding recommendation to both parties within a reasonable amount of time, not to exceed thirty (30) days, unless otherwise agreed by the parties. Upon receipt of the Engineer's analysis and non-binding recommendation, the Contractor and the Town Manager shall meet and attempt in good faith to negotiate a mutually acceptable resolution of the Claim. If the parties successfully negotiate a mutually acceptable resolution, the terms shall be documented by a Change Order or Written Amendment, as appropriate, and signed by both parties.

If the parties fail to reach a mutually acceptable resolution of the Claim, the Claimant shall have the right to have the Claim reviewed by the Town Council. The Claimant shall file a written request for Town Council review within thirty (30) days of the termination of negotiations. The Town Council shall review the Claim at

the next available regularly scheduled Town Council meeting. The decision of the Town Council shall be final and binding on the parties.

Pending final resolution of a Claim, except as otherwise agreed in writing or as otherwise provided in the General Conditions, the Contractor shall proceed diligently with performance of the Contract and the Town shall continue to make payments in accordance with the Contract Documents.

If a dispute arises between the Owner and Contractor regarding a payment of a payment request the dispute must shall be finally determined by the Town Council. Such dispute resolution shall commence within 10 days after the date the payment request or proper invoice was received by the Town and conclude by a final decision of the Town Council within 45 days after the date the payment request or proper invoice was received by the local Town. In between the date of commencement and the date, if necessary, the Town Council is to decide the dispute, the Contractor and the Town Manager shall attempt to resolve the dispute. If the dispute cannot be resolved between the Contractor and the Town Manager, then the matter shall be resolved by the Town Council. If the matter is resolved between the Contractor and Town Manager then the matter need not be brought to the Town Council for resolution. The Town Manager may, however, bring the matter to the Town Council for approval of the proposed resolution between the parties. If the dispute is resolved in favor of the Town, interest charges begin to accrue 15 days after the Town's final decision. If the dispute is resolved in favor of the Contractor, interest begins to accrue as of the original date the payment became due.

14.7 TIME EXTENSION

The Contract Time or milestones may only be changed by a Change Order, Construction Change Directive or Written Amendment. The Contractor's right to proceed shall not be terminated nor the Contractor charged with liquidated damages and associated Town expenses if the delay in the completion of the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Town, acts of another Contractor in performance of a contract with the Town, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, unusually severe weather, or delays of Subcontractors or suppliers arising from unforeseeable causes beyond the control and without fault or negligence of both the Contractor and such Subcontractor or suppliers.

Any request by the Contractor for an extension of the Contract Time shall be based on a written notice delivered by the Contractor to the Town Manager with a copy to the Engineer promptly (but in no event later than ten (10) days) after the start of the occurrence or event giving rise to the request. The notice shall state the number of calendar days being requested and the reason (or reasons) for the need for the additional time. The Engineer shall promptly investigate the stated reasons for the time extension, and shall render a non-binding opinion as to whether such reasons cause an increase in the time required for, performance of any part of the Work under this Contract and shall make a non-binding recommendation for an adjustment to the Contract Time. Contractor and the Town Manager shall meet and discuss the Engineer's recommendation and shall attempt to negotiate a mutually acceptable adjustment. If the Contractor and the Town Manager reach agreement, the terms of the adjustment shall be documented by a Change Order. If the Town Manager finds that a change to the Contract Time is warranted but the Contractor does not agree with the proposed adjustment to the Contract Time, the Town Manager may issue a Construction Change Directive. If the Contractor disagrees with the Town Manager's findings regarding the non-existence of grounds for a time extension or the Town Manager's proposed adjustment of the Contract Time, if any, the Contractor may file a Claim in accordance with Section 14.6 of these General Conditions within 30 days of receipt of the Town Manager's determination.

No Claim for an extension of the Contract Time will be valid if not submitted in accordance with this paragraph.

14.8 Notwithstanding the above, should the change order result in an increase in the price of the contract in excess of any authorized change order amount herein such change order approval or rejection shall be brought to the Town Council at the next scheduled Town Council meeting following the date the change order is submitted.

ARTICLE 15 - TERMINATION AND SUSPENSION

15.1 TERMINATION FOR CAUSE

The Town may terminate the Contract if the Contractor:

- a. Persistently or repeatedly refuses or fails to supply enough skilled Workers or proper materials;
- b. Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- c. Disregards laws, statutes, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- d. Is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency;
- e. Repeatedly or consistently fails to meet project schedules;
- f. Otherwise, is guilty of substantial breach of a provision of the Contract.

When any of the above reasons exist, the Town may, without prejudice to any other rights or remedies of the Town and after giving the Contractor and the Contractor's Surety seven (7) days written notice, terminate employment of the Contractor and may, subject to any prior rights of the Surety:

- a. Take possession of the site and all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- b. Accept assignment of subcontracts; and
- c. Finish the Work by whatever reasonable method the Town may deem expedient.

When the Town terminates the Contract for one of the reasons stated in this paragraph, the Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work as determined by the Town, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Town. This obligation for payment shall survive termination of the Contract. Upon a final determination that the termination was improper, it will be deemed converted to a termination for convenience and the Contractor's remedy for a wrongful termination will be limited to recovery of profit for the completed Work and reasonable termination costs.

15.2 TERMINATION FOR CONVENIENCE

The performance of Work under this Contract may be terminated by the Town in accordance with this clause in whole, or from time to time in part, whenever the Engineer shall determine that such termination is in the best interest of the Town. Any such termination shall be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination become effective. After receipt of a Notice of Termination, and except as otherwise directed by the Town, the Contractor shall:

- a. Stop Work under the Contract on the date and to the extent specified in the Notice of Termination;
- b. Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
- c. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
- d. Assign to the Town, in the manner, at the times, and to the extent directed by the Town, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Town shall have the right, in its discretion, to settle or pay any or all claims

- arising out of the termination of such orders and subcontracts;
- e. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Town, to the extent required, which approval or ratification shall be final for all the purposes of this clause;
 - f. Transfer title and deliver to the Town, in the manner, at the times, and to the extent, if any, directed by the Town: The fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with, the performance of the Work terminated by the Notice of Termination, and the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the Town;
 - g. Use best efforts to sell, in the manner, at the times, to the extent, and at the price directed or authorized by the Town, any property of the types referred to in (f) above; provided , however, the Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price or prices approved by the Town; and provided further, the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Town to the Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the Town may direct;
 - h. Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and;
 - i. Take such action as may be necessary, or as the Town may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Town has or may acquire an interest.

After receipt of a Notice of Termination, the Contractor shall submit to the Town their termination Claim, in the form and with certification, prescribed by the Town. The Contractor and the Town may agree upon the whole or any part of the amount to be paid to the Contractor by reason of the total or partial termination of Work pursuant to this clause. This amount may include a reasonable allowance for profit on Work not performed, provided that such agreed amount, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as reduced by the estimated cost of the Contractor's overhead and administrative expenses for Work not performed, and as further reduced by the Contract price of Work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount in accordance with the Section entitled "Payment to Contractor."

15.3 SUSPENSION OF WORK

The Town may, with or without cause, order the Contractor in writing to suspend, delay, or interrupt the Work, in whole or in part, for such period of time as the Town may determine. An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption.

No adjustment shall be made to the extent:

- a. That performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or
- b. That an equitable adjustment is made or denied under another provision of this Contract.

Adjustments made in the cost of performance may have a mutually agreed, fixed, or percentage fee.

ARTICLE 16 – PAYMENT AND COMPLETION

16.1 INSPECTION AND ACCEPTANCE

All Work shall be subject to inspection and test by the Town at all reasonable times and at all places prior to acceptance. Any such inspection and test is for the sole benefit of the Town and shall not relieve the

Contractor of the responsibility of providing quality control measures to assure that the Work strictly complies with the Contract requirements. No inspection or test by the Town shall be construed as constituting or implying acceptance. Inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material or Work in place prior to acceptance and shall not in any way affect the continuing rights of the Town after acceptance of the completed Work.

The presence or absence of a Town Observer does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the Specifications without the Town's written authorization.

The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work performed under the Contract conforms to Contract requirements. The Contractor shall maintain complete inspection records and make them available to the Town (within fifteen [15] days upon request). All Work shall be conducted under the general direction of the Engineer and is subject to Town inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.

The Contract shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Engineer. The Town may charge to the Contractor any additional cost of inspection or test when Work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Town shall perform all inspections and tests in a manner that will not unnecessarily delay the Work. Special, full size, and performance tests shall be performed as described in the Contract.

The Contractor shall, without charge, replace any material or correct any workmanship found by the Town not to conform to the Contract requirements, unless the Town consents to accept such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Town:

- a. May, by Contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or
- b. May terminate the Contractor's right to proceed in accordance with the paragraph of this section entitled "Termination for Default."

The Contractor shall furnish promptly, without additional charge, all facilities, labor and material reasonable need for performing such safe and convenient inspections and tests as may be required by the Town. All inspections and tests by the Town shall be performed in such manner as not to unnecessarily delay the Work. The Town reserves the right to charge to the Contractor any additional cost of inspection or test when material or Workmanship is not ready at the time specified by the Contractor for inspection or test, or when reinspection or retest is necessitated by Work not complying with the Contract and/or any applicable federal, state, or municipal laws, codes, and regulations in connection with the prosecution of the Work.

Should it be considered necessary or advisable by the Town at any time before acceptance of the entire Work to make an examination of Work already completed, by removing or tearing out the same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such Work is found to be defective or not conforming in any material respect, due to the fault of the Contractor or his Subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, an equitable adjustment shall be made in the Contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the Work has been delayed thereby, he shall, in addition, be granted a suitable extension of time.

Unless otherwise provided in this Contract, acceptance by the Town shall be made as promptly as practicable after completion and inspection of all Work required by this Contract, or that portion of the Work, that the Town determines can be accepted separately. Acceptance shall be final and conclusive, except as regards latent defects, fraud, or such gross mistakes as may amount to fraud or as regards the Town's rights under any warranty or guarantee. The Town shall evidence acceptance of the Work in writing by approved request for

“Final Payment” and by issuance of the Certificate of Final Completion.

16.2 SCHEDULE OF VALUES

The accepted schedule of values will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to or provided by the Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

16.3 PAYMENT TO CONTRACTOR

At least ten (10) days before each progress payment is scheduled (but not more often than once a month), the Contractor will submit to the Engineer for review an Application for Payment filled out and signed by the Contractor covering the Work completed during the period covered by the Application for Payment and supported by such documentation as the Engineer may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing by both parties, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation, satisfactory to the Town, as will establish the Town's title to the material and equipment and protect the Town's interest therein, including applicable insurance. The Engineer will, within fifteen (15) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application for Payment to the Town or return the Application for Payment to the Contractor indicating in writing reasons for refusing to recommend payment. In the latter case, the Contractor may make the necessary corrections and resubmit the Application for Payment. The Town will, within fifteen (15) days of presentation of an approved Application for Payment, pay the Contractor a progress payment on the basis of the approved Application for Payment less the retainage. The retainage shall be an amount equal to 5 percent. Upon substantial completion of the Work, any amount retained may be paid to the Contractor. When the Work has been substantially completed except for Work which cannot be completed because of weather conditions, lack of materials or other reasons which in the judgment of the Town are valid reasons for noncompletion, the Town may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the Work still to be completed or corrected.

16.4 CONTRACTOR'S WARRANTY OF TITLE

The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Town upon Contractor's receipt of the Payment, free and clear of all Liens; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor or by any other person performing the Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

16.5 APPLICATION FOR PAYMENT REVIEW

The Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by the Engineer to the Town based on the Engineer's on-site observations of the executed Work as an experienced and qualified design professional and on the Engineer's review of the Application for Payment and the accompanying data and schedules, that, to the best of the Engineer's knowledge, information and belief, that the Work has progressed to the point indicated; the quality of the Work is generally in accordance with the Contractor Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent test called for in the Contract Documents and any qualifications stated in the recommendation); and that the Contractor is entitled to payment of the amount recommended. However, by recommending any such payment the Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site observations to check the quality or the quantity of the Work, were made or that the means, methods, techniques, sequences, and procedures of construction were reviewed or that any examination to ascertain how or for what purpose the Contractor has used the moneys paid or to be paid to the Contractor on account of the Contract Price were made, or that title to any Work, materials, or equipment has passed to the Town free and clear of any Liens. The Contractor shall make the following certification on each request for payment:

I certify that to the best of my knowledge and belief that all items and amounts herein are correct; that all Work has been performed and/or material supplied in conformance with the Contract Documents, and that the balance due is appropriate for payment.

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

- a. The Work is defective, or completed Work has been damaged requiring correction or replacement,
- b. The Work for which payment is requested cannot be verified,
- c. Claims or Liens have been filed or there is reasonable evidence indicating the probable filing thereof,
- d. The Contract Price has been reduced because of Modification,
- e. The Town has been required to correct defective Work or complete the Work.
- f. Of unsatisfactory prosecution of the Work, including failure to clean up.
- g. Of persistent failure to cooperate with other contractors on the Project and persistent failure to carry out the Work in accordance with the Contract Documents.
- h. Of any other violation of, or failure to comply with, the provisions of the Contract Documents.

Upon completion and acceptance of the Work, the Engineer will issue a Certificate of Final Completion attached to the final Application for Payment that the Work has been accepted by the Engineer under the conditions of the Contract Documents. The entire balance found to be due the Contractor, including the retained percentages, but except such sums as may be lawfully retained by the Town, will be paid to the Contractor within thirty (30) days of completion and acceptance of the Work.

16.6 SUBSTANTIAL COMPLETION

When the Contractor considers the entire Work ready for its intended use the Contractor shall notify the Town and the Engineer in writing the entire Work is substantially complete, except for items specifically listed by the Contractor as incomplete, and request the Engineer issue a Certificate of Substantial Completion. Within a reasonable time thereafter, the Town, the Contractor, and the Engineer shall observe the Work to determine the status of completion. If the Engineer does not consider the Work substantially complete, the Engineer will notify the Contractor in writing giving the reasons, therefore. If the Engineer considers the Work substantially complete, the Engineer will prepare and deliver to the Town a tentative Certificate of Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. The Town shall have seven (7) days after receipt of the tentative certificate during which to make written objection to the Engineer as to any provisions of the certificate or attached list. If, after considering such objections, the Engineer concludes that the Work is not substantially complete, the Engineer will within fourteen (14) days after submission of the tentative certificate to the Town notify the Contractor in writing, stating the reasons, therefore. If, after consideration of the Town's objections, the Engineer considers the Work substantially complete, the Engineer will within said fourteen (14) days execute and deliver to the Town and the Contractor a definitive Certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as the Engineer believes justified after consideration of any objections from the Town. At the time of delivery of the tentative Certificate of Substantial Completion, the Engineer will deliver to the Town and the Contractor a written recommendation as to division of responsibilities pending final payment between the Town and the Contractor with respect to security, operation, safety, maintenance, heat, utilities, insurance, and warranties. Unless the Town and the Contractor agree otherwise in writing and so inform the Engineer in writing prior to the Engineer's issuing the definitive Certificate of Substantial Completion, the Engineers aforesaid recommendation will be binding on the Town and the Contractor until final payment. The Town shall have the right to exclude the Contractor from the Work after the date of Substantial Completion, but the Town shall allow the Contractor reasonable access to complete or correct items on the tentative list.

16.7 FINAL APPLICATION FOR PAYMENT

After the Contractor has completed all remaining work and corrections as stated on the punch list to the satisfaction of the Engineer and delivered all maintenance and operating instruction, schedules, guarantees, bonds, certificates of inspection, as-built Project Drawings, marked-up record documents and other documents (all as required by the Contract Documents, and after the Engineer has indicated the Work is acceptable) the Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to the Town) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the Town, the Contractor may furnish receipts or releases in full; an affidavit of the Contractor that the releases and receipts include all labor, services, material and equipment for which the Town or the Town's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor or Supplier fails to furnish a release or receipt in full, the Contractor may furnish a bond or other collateral satisfactory to the Town to indemnify the Town against any lien. The Contractor shall not be required to provide any releases or waivers from claimants provided that the Payment Bond has been recorded and delivered in accordance with Section 5.1 and the Surety has provided the Town with a written consent regarding the Project in accordance with Section 255.05(11), Florida Statutes and such written consent has not been revoked.

Notwithstanding anything to the contrary herein, the parties agree to comply with the provisions of F.S. 218.735 (7) and (8), 255.077, and 255.078.

16.8 USE AND POSSESSION PRIOR TO COMPLETION

The Town shall have the right to take possession of or use any completed or partially completed part of the Work. Such possession or use shall not be deemed an acceptance of any Work under the Contract. If such prior possession or use by the Town delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment in the Contract price or the time of completion will be made, and the Contract shall be modified in writing accordingly.

16.9 OTHER CONTRACTS

The Town may undertake or award other contracts for additional Work, and the Contractor shall fully cooperate with such other contractors and Town employees and carefully coordinate his own Work to such additional Work as may be directed by the Town. The Contractor shall not commit or permit any act that will interfere with the performance of Work by any other contractor or by Town employees.

16.10 MATERIAL AND WORKMANSHIP

Unless otherwise specifically provided in this Contract, all equipment, material, and articles incorporated in the Work covered by this Contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this Contract, reference to any equipment, material, article or patented process, by trade name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may, at their option, use any equipment, material, article or process which, in the judgment of the Town, is equal to that named. The Contractor shall furnish to the Town, for approval, the name of the manufacturer, the model number and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment that the Contractor contemplates incorporating in the Work. The Contractor shall furnish the Town, for approval, full information concerning the material or articles that they contemplate incorporating in the Work. When so directed, samples shall be submitted for approval at the Contractor's expense. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection. All Work under this Contract shall be performed in a skillful and workmanlike manner. The Town may, in writing, require the Contractor to remove from the Work any employee the Town deems incompetent, careless, or otherwise objectionable.

16.11 WARRANTY

The Contractor warrants to the Town that all materials and equipment furnished under this Contract will be new and that all Work will be of good quality free from faults and defects and is in conformance with the Contract. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Town, the Contractor shall furnish satisfactory evidence as to the kind and quality of the materials and equipment. Any Work, equipment or materials that, within one (1) year from the date of substantial completion as determined by the Town, is not in conformance with the Contract or is otherwise found to be defective, must be corrected or replaced, at Contractor's expense.

16.12 WORK AND STORAGE AREAS

All operations of the Contractor, including storage of materials upon Town premises, shall be confined to areas authorized or approved by the Town. Temporary buildings, storage sheds, shops, offices, etc., may be erected by the Contractor only with the approval of the Town and shall be built with labor and materials furnished by the Contractor without expense to the Town. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by them at their expense upon the completion of the Work. With the written consent of the Town, such buildings and utilities may be abandoned and need not be removed.

The Contractor shall, under regulations prescribed by the Town, use only established roadways or construct and use such temporary roadways as may be authorized by the Town. Where materials are transported in the prosecution of the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by a federal, state, or local law or regulations. When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by the Contractor and any damaged roads, curbing or sidewalks shall be repaired by, or at the expense of the Contractor.

The Contractor shall not store materials, except those to be incorporated in the Work, on the Project site. Portions of completed Work and materials incorporated in the Work shall be deemed to have become the property of the Town, but if any such materials or parts of the Work become lost, damaged, or destroyed by any means whatsoever, the Contractor shall satisfactorily repair and replace the same at their own cost. The Contractor shall be responsible for any materials of construction stored on the site, and shall replace, in kind, any such materials lost, damaged, or destroyed at their own expense.

The Contractor shall maintain, where and when needed, suitable and sufficient guard signs and barriers, and at night, suitable and sufficient lights for the prevention of accidents. Guard signs and lights shall comply with OSHA, FDOT, and Coast Guard regulations. Lights shall be shielded or directed to minimize unwanted light pollution.

The Contractor shall clear from within the limits of the Town's Work area all objectionable debris necessary to conduct the Work operations. The Work area shall, at all times, be kept free from accumulation of waste material or rubbish, and prior to completion of the Work, all rubbish, tools, equipment and materials shall be removed from, on or about the site.

Upon completion of the Work specified herein and before acceptance and final payment shall be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, and temporary structures. Material cleared from the site and deposited on adjacent property will not be considered as having been disposed of satisfactorily. Any salvaged material not specified to be disposed of otherwise, shall become the property of the Contractor and shall be removed from the site.

16.13 TAX EXEMPTION

The Town is exempted from payment of Florida State Sales and Use taxes and Federal Excise tax. The Contractor, however, shall not be exempted from paying Florida State Sales and Use taxes to the appropriate governmental agencies or for payment by the Contractor to supplier for taxes on materials used to fulfill its Contractual obligations with the Town.

The Contractor shall be responsible and liable for the payment of all of its FICA/Social Security and other taxes resulting from this Contract.

16.14 RECORDS

The Contractor shall maintain records and the Town shall have inspection and audit rights as follows:

- a. Maintenance of records: The Contractor shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this Contract including supporting documentation for any service rates, expenses, research, or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from completing performance and receiving final payment under this Contract.
- b. Examination of records: The Town or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this Contract. Such examination may be made only within five (5) years from the date of final payment under this Contract and upon reasonable notice, time, and place.

Records that relate to any litigation, appeals, or settlements of Claims arising from performance under this Contract shall be made available until a final disposition has been made of such litigation, appeals, or Claims.

- c. Cost and pricing data: The Contractor, by executing this Contract, certifies to truth-in-negotiation, specifically that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of Contracting. The Contractor agrees that the Town may adjust the consideration for this Contract to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other actual unit costs. The Town shall make any such

adjustment within one (1) year following the termination of this Contract.

16.15 PUBLIC ACCESS

The Contractor shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the Contractor assert any exemptions to the requirements of Chapter 119 F.S. and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the Contractor.

16.16 NONDISCRIMINATION

The Contractor hereby assures that no person shall be excluded on the grounds of race, color, creed, national origin, disability, age, or sex from participation in, denied the benefits of, or otherwise be subjected to discrimination in any activity under this Contract. The Contractor shall take all measures necessary to effectuate these assurances.

16.17 FORCE MAJEURE

Notwithstanding any provisions of this Contract to the contrary, the parties shall not be held liable if failure or delay in the performance of this Contract arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties.

16.18 PUBLIC RECORDS

To the extent applicable the following shall apply:

In accordance with Florida Statutes 119.0701, the Contractor shall comply with Florida's public records laws, and other laws and regulations, specifically to:

- A. Keep and maintain public records required by the Town to perform the service and meet all applicable requirements for retaining public records.
- B. Upon request from the Town's custodian of public records, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law or regulations for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the Town.
- D. Upon completion of the contract, transfer, if requested by the Town at no cost to the Town, all public records in possession of the Contractor to the Town. If the Contractor transfers all public records upon termination of this agreement to the Town, the Contractor shall destroy any duplicate public records that are exempt or confidential, and exempt from public records disclosure requirements. All records stored electronically must be provided to the Town in a format that is compatible with the information technology systems of the Town.
- E. Failure of the Contractor to comply with a public records request and this paragraph shall be a breach of this agreement and if the Contractor fails to cure said breach within 5 business days of receipt of notice from the Town, notwithstanding anything to the contrary contained in this agreement, the Town may terminate this agreement and be relieved of all obligations hereunder. The Contractor shall also be obligated to reimburse the Town any damages incurred or assessed against the Town, including attorney's fees and costs, as a result of the Contractor's failure to comply with Florida's public records laws.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTRACTOR SHALL CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS (CURRENTLY RICHARD KOHLER, TOWN CLERK) AT 321-727-7764 OR AT EMAIL:

TOWNCLERK@TOWNOFMALABAR.ORG OR AT THE ADDRESS: 2725 MALABAR ROAD,
MALABAR, FL 32950, (ATTENTION: RECORDS).

ARTICLE 17 – VALUE ENGINEERING

17.1 GENERAL

The Contractor is encouraged to develop, prepare, and submit Value Engineering Proposals (VEP's) voluntarily. The Contractor shall share in any Contract savings realized from accepted VEP's in accordance with the paragraph below.

17.2 VEP PREPARATION

As a minimum, the Contractor shall include in each VEP the information described in subparagraphs 1 through 8 below:

1. A description of the difference between the existing Contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.
2. A list and analysis of the Contract requirements that must be changed if the VEP is accepted, including any suggested specification revisions.
3. A separate, detailed cost estimate for: 1) the affected portions of the existing contact requirement, and 2) the VEP. The cost reduction associated with the VEP shall take into account the Contractor's costs, including any amount attributable to subcontracts under the paragraph below.
4. A description and estimate of costs that Town may incur in implementing the VEP, such as test and evaluation, operating, maintenance and support costs.
5. A prediction of any effects the proposed change would have on the operating costs of the Town.
6. A statement of the time by which a Contract amendment accepting the VEP must be issued in order to achieve the maximum cost reduction, noting any effect on the Contract completion time.
7. Identification of any previous submissions of the VEP, including the dates submitted, the Contract numbers involved, and previous District actions.
8. Any design change to the plans and specifications must be prepared under the supervision of a Professional Engineer in the State of Florida at the Contractor's expense. Such changes shall adhere to Florida law and the Florida Board of Professional Engineer's rules for taking over or modifying another Engineer's work. The Contractor will submit signed and sealed drawings and calculations to the Town's Engineer (and if applicable, the project's Engineer of Record) for approval. Drawings and calculations will be signed and sealed by a professional Florida Engineer.

17.3 SUBMISSION

The Contractor shall submit VEP's to the Engineer.

17.4 EXECUTION

The Engineer shall notify the Contractor of the status of the VEP within fourteen (14) calendar days after Engineer receives it. If additional time is required, the Engineer shall provide the reason for the delay and the expected date of the decision. The Town will process VEP's expeditiously; however, it shall not be liable for any delay in acting upon a VEP.

If the VEP is not accepted, the Engineer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VEP, in whole or in part, at any time before it is accepted by the Town. The Engineer may require that the Contractor provide written notification before undertaking significant expenditures for VEP effort.

Any VEP may be accepted, in whole or in part, by the Town's execution of an amendment to this Contract

citing this clause: the Town may accept the VEP, even though an agreement on price reduction has not been reached, by issuing the Contractor a Construction Change Directive to proceed with the change. Until a Construction Change Directive is issued, or a Contract amendment applies a VEP to this Contract, the Contractor shall perform in accordance with the existing Contract. The Town's decision to accept or reject, all or part of any VEP, shall be final and not subject to the Disputes clause or otherwise subject to litigation.

17.5 SHARING

The Contractor's share of savings is determined by subtracting Town's costs (i.e. test and evaluation, operating, maintenance and support costs, etc.) from Contract savings and multiplying the result by fifty percent (50%).

Payment of any share due the Contractor for use of a VEP on this Contract shall be authorized by an amendment to this Contract to accept the VEP and reduce the Contract price by the amount of the Contract savings. This amendment will also add the Contractors share of savings to the Contract Price.

The Contractor is encouraged to include an appropriate Value Engineering clause in any subcontract and to share any cost savings with its Subcontractors.

Substitution of materials and/or equipment in lieu of that specified shall not necessarily be considered a VEP. To be considered as a VEP, the substitution must involve cost savings other than a simple reduction in price of the equipment or materials.

ARTICLE 18 – RESPONSIBILITIES

18.1 TOWN'S RESPONSIBILITIES

Except as otherwise provided in these General Conditions, the Town will issue all communications to the Contractor through the Engineer.

The Town will furnish the data required of the Town under the Contract Documents promptly and shall make payments to the Contractor promptly when they are due as provided in these General Conditions.

Unless otherwise indicated, the Town's duties in respect of providing lands and easements are set forth elsewhere in these General Conditions.

In addition to the Town's rights to request changes in the Work in accordance with the section entitled "CHANGES IN THE WORK" of the General Conditions, the Town will be obligated to execute necessary Change Orders.

The Town will not supervise, direct or have control or authority over, nor be responsible for, the Contractor's means, sequences or procedures of construction or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with Laws and Regulations applicable to the performance of the Work. The Town will not be responsible for the Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

18.2 ENGINEER'S RESPONSIBILITIES

a. Town's Representative

The Engineer will be the Town's representative during the construction period. The duties and responsibilities and the limitations of the authority of the Engineer as the Town's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of the Town and the Engineer.

b. Visits to the Site

The Engineer will make visits to the site on a regular basis at intervals appropriate to the various stages of construction as the Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and quality of the various aspects of the Contractor's executed Work. Based on information obtained during such visits and observations,

the Engineer will endeavor for the benefit of the Town to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Engineer's efforts will be directed toward providing the Town a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, the Engineer will keep the Town informed of the progress of the Work and will endeavor to guard the Town against defects and deficiencies in the Work.

The Engineer's visits and on-site observations are subject to all the limitations on the Engineer's authority and responsibility set forth in these General Conditions, and particularly, but without limitation, during or as a result of the Engineer's on-site visits or observations of the Contractor's Work the Engineer will not supervise, direct, control or have authority over or be responsible for the Contractor's techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with Laws and Regulations applicable to the furnishing or performance of the Work.

c. Clarifications and Interpretations

The Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the Engineer may determine necessary, which shall be consistent with the intent or reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on the Town and the Contractor. If the Town or the Contractor believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Time, the Town or Contractor may make a written Claim therefore as provided in these General Conditions. The Engineer and the Town shall not be held responsible for all ambiguities (latent and patent) found in the Contract Documents.

ARTICLE 19 - SUPPLEMENTARY CONDITIONS

19.1 CONSTRUCTION DRAWINGS AND SPECIFICATIONS DISTRIBUTION

The Contractor will be supplied with four (4) copies of the Project Drawings and Specifications. Additional copies can be obtained by the Contractor at reproduction cost. The Contractor shall have one (1) set of the Project Drawings and Specifications at the job site at all times.

19.2 "AS-BUILT" CONTRACT DRAWINGS

The Contractor shall maintain a separate set of full-size Contract Drawings, marked up in red, to indicate as-built conditions. These Drawings shall be maintained in a current condition at all times until completion of the Work and shall be available for review by the Engineer at all times. All variations from the Contract Drawings, for whatever reasons, including those occasioned by modifications, optional materials, and the required coordination between trades, shall be indicated. These variations shall be shown in the same general detail utilized in the Contract Drawings. Upon completion of the Work, the marked-up Drawings shall be furnished to the Engineer prior to acceptance of the Work. The Engineer reserves the right to withhold final payment until acceptable as-built Contract Drawings have been submitted.

19.3 PERMITS

The Town will supply environmental license agreements and permits required by the Florida Department of Environmental Protection and the U. S. Army Corps of Engineers (**APPENDIX B**). The Contractor is responsible for all other permits required during construction.

ARTICLE 20 – EQUAL EMPLOYMENT OPPORTUNITY

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without

regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

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

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

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

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the

applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

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

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

ARTICLE 21 COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. **(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Town of Malabar shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

ARTICLE 22 PROCUREMENT OF RECOVERED MATERIALS

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

ARTICLE 23 DHS SEAL, LOGO, FLAGS

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

ARTICLE 24 COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

ARTICLE 25 NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

ARTICLE 26 PROGRAM FRAUD AND FALSE OR FRAUDULANT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

ARTICLE 27 DEBARMENT AND SUSPENSION

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by Town of Malabar. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Town of Malabar, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

--End of Section--

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SECTION 0-15

SAFETY AND OCCUPATIONAL HEALTH REQUIREMENTS

PART 1 - GENERAL

1.1 SUMMARY

- A. This specification covers the requirements for safety and occupational health requirements for the protection of the Contractor, Engineer personnel, property, and other resources.

1.2 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only. All publications are "Latest Edition" unless specified otherwise.

- A. American National Standards Institute (ANSI)
ANSI A10.32 Personal Fall Protection for Use in Construction and Demolition Operations
- B. American Society of Safety Professionals (ASSE)
ANSI/ASSE Z359.1 Safety Requirements for Personal Fall Arrest Systems and Subsystems and Components
ASSE A10.34 Protection of the Public on or Adjacent to Construction Sites
- C. American Society of Mechanical Engineers (ASME)
ASME B30.22 Articulating Boom Cranes
ASME B30.3 Tower Cranes: Safety Standard for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks, and Slings
ASME B30.5 Mobile and Locomotive Cranes
ASME B30.8 Floating Cranes and Floating Derricks
- D. National Fire Protection Association (NFPA)
NFPA 10HB10 Portable Fire Extinguishers
NFPA 241 Standard for Safeguarding Construction, Alteration, and Demolition Operations
NFPA 70 National Electrical Code
NFPA 70E Standard for Electrical Safety in the Workplace
- E. U.S. Army Corps of Engineers (USACE)
EM 385-1-1 Safety and Health Requirements
- F. U.S. National Archives and Records Administration (NARA)
29 CFR 1910.146 Permit-required Confined Spaces
29 CFR 1926 Safety and Health Regulations for Construction
29 CFR 1926.500 Fall Protection

1.3 SUBMITTALS

The following shall be submitted in accordance with Section 01 33 00 SUBMITTAL PROCEDURES

- A. Accident Prevention Plan (APP)
 - 1. Submit the APP to the Engineer for information only at or before the scheduled pre-construction meeting.
- B. Activity Hazard Analysis (AHA)
 - 1. Submit the AHA for review at least fifteen (15) calendar days prior to the start of each phase.
- C. Accident Reports
 - 1. Submit reports as their incidence occurs, in accordance with the requirements of the paragraph entitled, "Reports."
- D. Drug Free Work Place Compliance
 - 1. Submit the Drug Free Work Place Compliance documentation form (SECTION 00 73 19A DRUG-FREE WORKPLACE FORM) to the Engineer at or before the scheduled pre-construction meeting.
- E. Personnel Qualification Requirements
 - 1. Submit personnel qualifications per requirements for the Site Safety and Health Officer (SSHO) and Crane Operators (Paragraph 1.4.A) at or before the scheduled pre-construction meeting.

1.4 SITE QUALIFICATIONS, DUTIES AND MEETINGS

- A. Personnel Qualifications
 - 1. Site Safety and Health Officer (SSHO)
 - a. Site Safety and Health Officer (SSHO) shall be provided at the work site at all times to perform safety and occupational health management, surveillance, inspections, and safety enforcement for the Contractor. The Contractor Quality Control (QC) person can be the SSHO on this project. The SSHO shall meet the following requirements:
 - 1) A minimum of 5 years safety work on similar projects.
 - 2) 30-hour OSHA construction safety class or equivalent within the last 5 years.
 - 3) An average of at least 24 hours of formal safety training each year for the past 5 years.
 - 4) Competent person training as needed.
 - 2. Crane Operators
 - a. Crane operators shall meet the requirements in USACE EM 385-1-1, Section 16. In addition, for mobile cranes with Original Equipment Manufacturer (OEM) rated capacities of 50,000 pounds or greater, crane operators shall be designated as qualified by a source that qualifies crane operators (i.e., union, a government agency, or and organization that tests and qualifies crane operators). Proof of current qualification shall be provided.
- 3. Site Safety and Health Officer (SSHO)/Superintendent Personnel Duties
 - a. Conduct daily safety and health inspections and maintain a written log which includes area/operation inspected, date of inspection, identified hazards, recommended corrective actions, estimated and actual dates of corrections. Safety inspection logs shall be attached to the Contractors' daily quality control report.
 - b. Conduct mishap investigations and complete required reports. Maintain the OSHA Form 300 and Daily Production reports for prime and sub-contractors.
 - c. Maintain applicable safety reference material on the job site.
 - d. Attend the pre-construction conference, pre-work meetings including preparatory inspection meeting, and periodic in-progress meetings.
 - e. Implement and enforce accepted APPS and AHAs.
 - f. Maintain a safety and health deficiency tracking system that monitors outstanding deficiencies until resolution. A list of unresolved safety and health deficiencies shall be posted on the safety bulletin board.

- g. Ensure sub-contractor compliance with safety and health requirements.

Failure to perform the above duties will result in dismissal of the superintendent and/or SSHO, and a project work stoppage. The project work stoppage will remain in effect pending approval of a suitable replacement.

B. Meetings

1. Preconstruction Conference

- a. Contractor representatives who have a responsibility or significant role in accident prevention on the project shall attend the preconstruction conference. This includes the project superintendent, site safety and health officer, quality control supervisor, or any other assigned safety and health professionals who participated in the development of the APP (including the Activity Hazard Analyses (AHAs) and special plans, program and procedures associated with it).
- b. The Contractor shall discuss the details of the submitted APP to include incorporated plans, programs, procedures and a listing of anticipated AHAs that will be developed and implemented during the performance of the contract. This list of proposed AHAs will be reviewed at the conference and an agreement will be reached between the Contractor and the Engineer's representative as to which phases will require an analysis. In addition, a schedule for the preparation, submittal, review, and acceptance of AHAs shall be established to preclude project delays.
- c. Deficiencies in the submitted APP will be brought to the attention of the Contractor at the preconstruction conference, and the Contractor shall revise the plan to correct deficiencies and re-submit it for acceptance. Work shall not begin until there is an accepted APP.
- d. The functions of a Preconstruction conference may take place at the Post-Award Kickoff meeting for Design Build Contracts.

2. Safety Meetings

- a. Safety meetings shall be conducted and documented as required by EM 385-1-1. Minutes showing contract title, signatures of attendees and a list of topics discussed shall be attached to the Contractor's daily quality control report.

1.5 ACCIDENT PREVENTION PLAN (APP)

- A. The Contractor shall use a qualified person to prepare the written site-specific APP. Prepare the APP in accordance with the format and requirements of USACE EM 385-1-1 and as supplemented herein. Cover all paragraph and subparagraph elements in USACE EM 385-1-1, Appendix A, "Minimum Basic Outline for Accident Prevention Plans". Specific requirements for some of the APP elements are described below. The APP shall be job-specific and shall address any unusual or unique aspects of the project or activity for which it is written. The APP shall interface with the Contractor's overall safety and health program. Any portions of the Contractor's overall safety and health program referenced in the APP shall be included in the applicable APP element and made site-specific. The Engineer considers the Prime Contractor to be the "controlling authority" for all work site safety and health of the subcontractors. Contractors are responsible for informing their subcontractors of the safety provisions under the terms of the contract and the penalties for noncompliance, coordinating the work to prevent one craft from interfering with or creating hazardous working conditions for other crafts, and inspecting subcontractor operations to ensure that accident prevention responsibilities are being carried out. The APP shall be signed by the person and firm (senior person) preparing the APP, the Contractor, the on-site superintendent, the designated site safety and health officer and any designated CSP and/or CIH.
- B. Submit the APP to the Engineer at or before the preconstruction conference for information.
- C. Once received by the Engineer, the APP and attachments will be part of the Contract. Disregarding the provisions of this Contract or the received APP will be cause for stopping of work, at the discretion of the Engineer, until the matter has been rectified.
- D. Once work begins, changes to the received APP shall be made with the knowledge and concurrence of the Engineer, project superintendent, SSHO and quality control manager. Should any hazard become evident, stop work in the area, secure the area, and develop a plan

to remove the hazard. Notify the Engineer within 24 hours of discovery. Eliminate/remove the hazard. In the interim, all necessary action shall be taken to restore and maintain safe working conditions in order to safeguard onsite personnel, visitors, the public (as defined by ASSE A10.34) and the environment.

- E. Copies of the accepted plan will be maintained at the resident engineer's office and at the job site.
- F. The APP shall be continuously reviewed and amended, as necessary, throughout the life of the contract. Unusual or high-hazard activities not identified in the original APP shall be incorporated in the plan as they are discovered.

1.6 ACTIVITY HAZARD ANALYSIS (AHA)

- A. The Activity Hazard Analysis (AHA) format shall be in accordance with USACE EM 385-1-1. Submit the AHA for review at least fifteen (15) calendar days prior to the start of each phase. Format subsequent AHAs as amendments to the APP. The analysis should be used during daily inspections to ensure the implementation and effectiveness of the activity's safety and health controls. The AHA list will be reviewed periodically (at least monthly) at the Contractor supervisory safety meeting and updated as necessary when procedures, scheduling, or hazards change.
- B. The activity hazard analyses shall be developed using the project schedule as the basis for the activities performed. Any activities listed on the project schedule will require an AHA. The AHAs will be developed by the contractor, supplier or subcontractor and provided to the prime contractor for submittal to the Engineer.

1.7 DISPLAY OF SAFETY INFORMATION

- A. Within 1 calendar day after commencement of work, erect a safety bulletin board at the job site. The safety bulletin board shall include information and be maintained as required by EM 385-1-1, Section 01.A.07.

1.8 SITE SAFETY REFERENCE MATERIALS

- A. Maintain safety-related references applicable to the project, including those listed in the article "References." Maintain applicable equipment manufacturer's manuals.

1.9 EMERGENCY MEDICAL TREATMENT

- A. Contractors will arrange for their own emergency medical treatment. Engineer has no responsibility to provide emergency medical treatment.

1.10 REPORTS

- A. Accident Reports
 - 1. For recordable injuries and illnesses, and property damage accidents resulting in at least \$2,000 in damages, the Prime Contractor shall conduct an accident investigation to establish the root cause(s) of the accident, complete the USACE Accident Investigation Report Form 3394 and provide the report to the Engineer within 5 calendar day(s) of the accident. The Engineer will provide copies of any required or special forms.

PART 2 - PRODUCTS (NOT APPLICABLE)

PART 3 - EXECUTION

3.1 CONSTRUCTION AND/OR OTHER WORK

- A. The Contractor shall comply with USACE EM 385-1-1, NFPA 241, the APP, the AHA, Federal and/or State OSHA regulations, and other related submittals and activity fire and safety regulations. The most stringent standard shall prevail.

3.2 PRE-OUTAGE COORDINATION MEETING

- A. Contractors are required to apply for utility outages at least fifteen (15) days in advance. As a minimum, the request should include the location of the outage, utilities being affected, duration of outage and any necessary sketches. Special requirements for electrical outage requests are contained elsewhere in this specification section. Once approved, and prior to beginning work on the utility system requiring shut down, the Contractor shall attend a pre-outage coordination meeting with the Engineer and the Public Utilities representative to review the scope of work and the lock-out/tag-out procedures for worker protection. No work will be performed on energized electrical circuits unless proof is provided that no other means exist.

3.3 FALL HAZARD PROTECTION AND PREVENTION PROGRAM

- A. The Contractor shall establish a fall protection and prevention program, for the protection of all employees exposed to fall hazards. The program shall include company policy, identify responsibilities, education and training requirements, fall hazard identification, prevention and control measures, inspection, storage, care and maintenance of fall protection equipment and rescue and evacuation procedures.
- B. Training
 - 1. The Contractor shall institute a fall protection training program. As part of the Fall Hazard Protection and Prevention Program, the Contractor shall provide training for each employee who might be exposed to fall hazards. A competent person for fall protection shall provide the training. Training requirements shall be in accordance with USACE EM 385-1-1, Section 21.C.
- C. Fall Protection Equipment and Systems
 - 1. The Contractor shall enforce use of the fall protection equipment and systems designated for each specific work activity in the Fall Protection and Prevention Plan and/or AHA at all times when an employee is exposed to a fall hazard. Employees shall be protected from fall hazards as specified in EM 385-1-1, Section 21. In addition to the required fall protection systems, safety skiff, personal floatation devices, life rings etc., are required when working above or next to water in accordance with USACE EM 385-1-1, paragraphs 5.J. and 5.K. Personal fall arrest systems are required when working from an articulating or extendible boom, swing stages, or suspended platform. In addition, personal fall arrest systems are required when operating other equipment such as scissor lifts if the work platform is capable of being positioned outside the wheelbase. The need for tying-off in such equipment is to prevent ejection of the employee from the equipment during raising, lowering, or travel. Fall protection must comply with all applicable requirements.
- D. Personal Fall Arrest Equipment
 - 1. Personal fall arrest equipment, systems, subsystems, and components shall meet ANSI A10.32 and ASSE Z359.1. Only a full-body harness with a shock-absorbing lanyard or self-retracting lanyard is an acceptable personal fall arrest body support device. Body belts may only be used as a positioning device system (for uses such as steel reinforcing assembly and in addition to an approved fall arrest system). Harnesses shall have a fall arrest attachment affixed to the body support (usually a Dorsal D-ring) and specifically designated for attachment to the rest of the system. Only locking snap hooks and carabiners shall be used. Webbing, straps, and ropes shall be made of synthetic fiber. The maximum free fall distance when using fall arrest equipment shall not exceed 6 feet. The total fall distance and any swinging of the worker (pendulum-like motion) that can occur during a fall shall always be taken into consideration when attaching a person to a fall arrest system.
- E. Existing Anchorage
 - 1. Existing anchorages, to be used for attachment of personal fall arrest equipment, shall be certified (or re-certified) by a qualified person for fall protection in accordance with ASSE Z359.1. Existing horizontal lifeline anchorages shall be certified (or re-certified) by a registered professional engineer with experience in designing horizontal lifeline systems.
- F. Horizontal Lifelines
 - 1. Horizontal lifelines shall be designed, installed, certified and used under the supervision of

a qualified person for fall protection as part of a complete fall arrest system which maintains a safety factor of 2 (29 CFR 1926.502(d)(15)).

G. Guardrails and Safety Nets

1. Guardrails and safety nets shall be designed, installed and used in accordance with EM 385-1-1, 29 CFR 1926.502(b) and 29 CFR 1926.502(c).

H. Rescue and Evacuation Procedures

1. When personal fall arrest systems are used, the contractor must ensure that the mishap victim can self-rescue or can be rescued promptly should a fall occur. A Rescue and Evacuation Plan shall be prepared by the contractor and include a detailed discussion of the following: methods of rescue; methods of self-rescue; equipment used; training requirement; specialized training for the rescuers; procedures for requesting rescue and medical assistance; and transportation routes to a medical facility. The Rescue and Evacuation Plan shall be included in the Activity Hazard Analysis (AHA) for the phase of work, in the Fall Protection and Prevention (FP&P) Plan, and the Accident Prevention Plan (APP).

3.4 EQUIPMENT

A. Material Handling Equipment

1. Material handling equipment such as forklifts shall not be modified with work platform attachments for supporting employees unless specifically delineated in the manufacturer's printed operating instructions.
2. The use of hooks on equipment for lifting of material must be in accordance with manufacturer's printed instructions.
3. Operators of forklifts or power industrial trucks shall be licensed in accordance with OSHA.

B. Weight Handling Equipment

1. Cranes and derricks shall be equipped as specified in EM 385-1-1, Section 16.
2. The Contractor shall comply with the crane manufacturer's specifications and limitations for erection and operation of cranes and hoists used in support of the work. Erection shall be performed under the supervision of a designated person (as defined in ASME B30.5). All testing shall be performed in accordance with the manufacturer's recommended procedures.
3. The Contractor shall comply with ASME B30.5 for mobile and locomotive cranes, ASME B30.22 for articulating boom cranes, ASME B30.3 for construction tower cranes, and ASME B30.8 for floating cranes and floating derricks.
4. Under no circumstance shall a Contractor make a lift at or above 90% of the cranes rated capacity in any configuration.
5. When operating in the vicinity of overhead transmission lines, operators and riggers shall be alert to this special hazard and shall follow the requirements of USACE EM 385-1-1 Section 11 and ASME B30.5 or ASME B30.22 as applicable.
6. Crane suspended personnel work platforms (baskets) shall not be used unless the Contractor proves that using any other access to the work location would provide a greater hazard to the workers or is impossible. Personnel shall not be lifted with a line hoist or friction crane.
7. Portable fire extinguishers shall be inspected, maintained, and recharged as specified in NFPA 10, Standard for Portable Fire Extinguishers.
8. All employees shall be kept clear of loads about to be lifted and of suspended loads.
9. The Contractor shall use cribbing when performing lifts on outriggers.
10. The crane hook/block must be positioned directly over the load. Side loading of the crane is prohibited.
11. A physical barricade must be positioned to prevent personnel from entering the counterweight swing (tail swing) area of the crane.
12. Certification records which include the date of inspection, signature of the person performing the inspection, and the serial number or other identifier of the crane that was inspected shall always be available for review by Engineer personnel.
13. Written reports listing the load test procedures used along with any repairs or alterations

performed on the crane shall be available for review by Engineer personnel.

14. Certify that all crane operators have been trained in proper use of all safety devices (e.g. anti-two block devices).

3.5 ELECTRICAL

A. Conduct of Electrical Work

1. Underground electrical spaces must be certified safe for entry before entering to conduct work. Cables that will be cut must be positively identified and de-energized prior to performing each cut. Positive cable identification must be made prior to submitting any outage request for electrical systems. Arrangements are to be coordinated with the Engineer and Station Utilities for identification. The Engineer will not accept an outage request until the Contractor satisfactorily documents that the circuits have been clearly identified. Perform all high voltage cable cutting remotely using hydraulic cutting tool. When racking in or live switching of circuit breakers, no additional person other than the switch operator will be allowed in the space during the actual operation. Plan so that work near energized parts is minimized to the fullest extent possible. Use of electrical outages clear of any energized electrical sources is the preferred method. When working in energized substations, only qualified electrical workers shall be permitted to enter. When work requires Contractor to work near energized circuits as defined by the NFPA 70, high voltage personnel must use personal protective equipment that includes, as a minimum, electrical hard hat, safety shoes, insulating gloves with leather protective sleeves, fire retarding shirts, coveralls, face shields, and safety glasses. In addition, provide electrical arc flash protection for personnel as required by NFPA 70E. Insulating blankets, hearing protection, and switching suits may also be required, depending on the specific job and as delineated in the Contractor's AHA.

B. Portable Extension Cords

1. Portable extension cords shall be sized in accordance with manufacturer ratings for the tool to be powered and protected from damage. All damaged extension cords shall be immediately removed from service. Portable extension cords shall meet the requirements of NFPA 70.

3.6 WORK IN CONFINED SPACES

- #### **A.**
- The Contractor shall comply with the requirements in Section 34.A of USACE EM 385-1-1 and OSHA 29 CFR 1910.146 Any potential for a hazard in the confined space requires a permit system to be used.

1. Entry procedures. Prohibit entry into a confined space by personnel for any purpose, including hot work, until the qualified person has conducted appropriate tests to ensure the confined or enclosed space is safe for the work intended and that all potential hazards are controlled or eliminated and documented. (See Section 34.A.05 of USACE EM 385-1-1 for entry procedures.) All hazards pertaining to the space shall be reviewed with each employee during review of the AHA.
2. Forced air ventilation is required for all confined space entry operations and the minimum air exchange requirements must be maintained to ensure exposure to any hazardous atmosphere is kept below its' action level.

3.7 DRUG-FREE WORK PLACE

- #### **A.**
- The Contractor shall submit required certification (see SECTION 00 73 19A DRUG-FREE WORKPLACE FORM) that they have or will establish a drug free workplace in accordance with Florida Statute 287.087.

-End of Section-

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SECTION 0-16

DRUG-FREE WORKPLACE FORM

The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies

That _____ does:
(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation programs, employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, plea of guilty or nolo contendere to, any violation of Chapter 1893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program, if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Contractor's Signature

Date

--End of Section--

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Change in Contract Price:

Original Contract Price: \$ _____

Current Contract Price adjusted by previous Change Order \$ _____

The Contract Price due to this Change Order will be (Increased) (Decreased) by: \$ _____

The new Contract Price including this Change Order will be: \$ _____

Change in Contract Time:

Original Completion Date: _____

Current completion date adjusted by previous Change Order: _____

The Contract time due to this Change Order will be (Increased or Decreased) by the indicated number of calendar days: _____

The new Contract Time including this Change Order will be: _____

Recommended By: _____

ENGINEER

Authorized Signature: _____

Date: _____

Title: _____

Ordered By: _____

TOWN MANAGER

Authorized Signature: _____

Date: _____

Title: _____

Approved By: _____

MAYOR

Authorized Signature: _____

Date: _____

Title: _____

Accepted By: _____

CONTRACTOR

Authorized Signature: _____

Date:

Title: _____

--End of Section--

**SECTION 0-17
CHANGE ORDER**

Change Order No. _____

Date: _____

Agreement Date: _____

Project Name: Rocky Point Road Shoreline Restoration

Owner: Town of Malabar

Contractor: _____

The following changes are hereby made to the Contract Documents:

Justification:

**SECTION 0-17
CHANGE ORDER**

Change in Contract Price:

Original Contract Price:	\$ _____	-
Current Contract Price adjusted by previous Change Order	\$ _____	-
The Contract Price due to this Change Order will be Increased by:	\$ _____	-
The new Contract Price including this Change Order will be:	\$ _____	-

Change in Contract Time:

Original Completion Date:	_____
Current completion date adjusted by previous Change Order:	_____
The Contract time due to this Change Order will be (Increased or Decreased) by the indicated number of calendar days:	_____
The new Completion Date including this Change Order will be:	_____

Recommended By:

Authorized Signature: _____	Date: _____
Title: _____	

Ordered By:

Authorized Signature: _____	Date: _____
Title: _____	

Accepted By:

Authorized Signature: _____	Date: _____
Title: _____	

--End of Section--

SECTION 0-18 BYRD ANTI-LOBBYING CERTIFICATION

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

APPENDIX A – ANTI-LOBBYING CERTIFICATION

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date _____

February 21, 2024

Lisa Morrell - Town Manager
 Town of Malabar
 2725 Malabar Road
 Malabar, FL 32950

RE: Report to Recommend Selection of a Contractor for Bid: 24-01 Rocky Point Road Shoreline Restoration (Re-Bid) Project

Dear Ms. Morrell:

This letter is to provide you with the results of the review of the two low bids received by Coastal Waterways from the Town and recommend a contractor to construct the Rocky Point Road Shoreline Restoration (Re-Bid) Project. Based upon the following report, we recommend that you select Custom Built Marine Construction, Inc. (Custom Built) to construct the Rocky Point Road Shoreline Restoration (Re-Bid) Project.

The two low bids have been checked for mathematical errors. The bid totals from these Contractors are provided in the table below, presented in order of lowest potential bidder to highest bidder (the bid package for each bidder is on file with the Town):


<i>Contractor (Location)</i>	<i>Bid Amount</i>	<i>Number of Construction (days)</i>	<i>Comments</i>
Custom Built Marine Construction, Inc. (Ft. Pierce)	\$754,600.28	150	Corrected for a \$67.52 math error.
BDI Marine Construction, LLC (Hobe Sound)	\$795,718.05	270	
Engineers Estimate	\$800,000.00	270	

Custom Built Marine Construction, Inc. 3119 Hammond Rd., Fort Pierce, Florida 34946, has submitted the lowest bid. Custom Built has indicated that they have the resources and capability to get the work completed within 150 days from start of construction. The Custom Built bid amount of \$754,600.28 (corrected for mathematical errors) is 5.7% below the engineers estimate and is 5.2 % below the next highest bid amount. The 150-day construction period identified by Custom Built is 120 days less than what the engineer identified in the bid documents.

Custom Built has provided similar services on previous projects and appears capable of successfully constructing the Rocky Point Road Shoreline Restoration (Re-Bid) Project.

Sincerely,

COASTAL WATERWAYS



Stephen W. Boehning, P.E., CFM
 President / Principal Coastal Engineer

TOWN OF MALABAR

SPECIAL TOWN COUNCIL MEETING

AGENDA ITEM NO: **5.b.**

Meeting Date: February 26th, 2024

Prepared By: Richard W. Kohler, Town Clerk

SUBJECT: Scheduled Form 6 Meeting

BACKGROUND/HISTORY:

On Saturday February 17, Town Staff was informed that the Space Coast League of Cities (SCLoC) has scheduled a meeting to discuss the new Form 6 requirements. The speaker for the event will be Steven Zuilkowski, the Deputy Executive Director & General Council of the Florida Commission on Ethics. The meeting is scheduled for 6PM, Monday, March 18th at the Cocoa Civic Center. There is currently a RTCM scheduled for the 18th as well. Staff is requesting guidance on Council's interest in attending the Form 6 Meeting, and requesting if Council wishes to alter the upcoming meeting schedule.

ATTACHMENTS:

Email Invitation to the Scheduled Form 6 Meeting
Town of Malabar March Schedule

ACTION:

Direction from Council on intent to attend the Scheduled Form 6 Meeting.
Direction from Council on the March Meeting Schedule.

From: execsec@scloc.org
To: bfettrow@cityofrockledge.org; [Carrie Lombardo](mailto:Carrie.Lombardo@cityofrockledge.org); [Cathy Green](mailto:Cathy.Green@cityofrockledge.org); city.clerk@mbfl.org; [Cocoa Bch City Clerk](mailto:Cocoa.Bch.City.Clerk@cityofrockledge.org); D.LeFever@cityofcapecanaveral.org; [Eric Popham](mailto:Eric.Popham@cityofcapecanaveral.org); [Gwen Pierce](mailto:Gwen.Pierce@cityofcapecanaveral.org); [Heather Roberts](mailto:Heather.Roberts@cityofcapecanaveral.org); info@grantvalkaria.org; [Jennifer Kerr](mailto:Jennifer.Kerr@cityofcapecanaveral.org); [Jennifer Levasseur](mailto:Jennifer.Levasseur@cityofcapecanaveral.org); [Jessica Keenan](mailto:Jessica.Keenan@cityofcapecanaveral.org); jolynn.donhoff@titusville.com; Judy.Denis@palmbayflorida.org; [Karin Groom](mailto:Karin.Groom@cityofcapecanaveral.org); m.goforth@cityofcapecanaveral.org; marsenault@cocoaf1.org; mcarr@indialantic.com; [Meighan Alexander](mailto:Meighan.Alexander@cityofcapecanaveral.org); [Pat Burke](mailto:Pat.Burke@cityofcapecanaveral.org); [Richard Kohler - Archived on 12-07-22](mailto:Richard.Kohler@cityofcapecanaveral.org); sfrank@indianharbour.org; [Suzy Heardon](mailto:Suzy.Heardon@cityofcapecanaveral.org); [TMV Office Admin](mailto:TMV.Office.Admin@cityofcapecanaveral.org); TownClerk@melbournebeachfl.org; [Richard Kohler](mailto:Richard.Kohler@cityofcapecanaveral.org); Virginia.Blalock@Titusville.com; vtwitty@indialantic.com; wanda.wells@titusville.com
Cc: [Diana Adams\(2\)](mailto:Diana.Adams@cityofcapecanaveral.org); [Julie Kennedy](mailto:Julie.Kennedy@cityofcapecanaveral.org); [Steve Osmer](mailto:Steve.Osmer@cityofcapecanaveral.org); stoeckel.sarah@yahoo.com; [Adam Dyer](mailto:Adam.Dyer@cityofcapecanaveral.org); [Andrea Young](mailto:Andrea.Young@cityofcapecanaveral.org); [Brett Miller](mailto:Brett.Miller@cityofcapecanaveral.org); [Bridget Foster](mailto:Bridget.Foster@cityofcapecanaveral.org); [Chase Chambliss](mailto:Chase.Chambliss@cityofcapecanaveral.org); [Corey Runte](mailto:Corey.Runte@cityofcapecanaveral.org); [Dan Diesel](mailto:Dan.Diesel@cityofcapecanaveral.org); [Mary Hofmeister](mailto:Mary.Hofmeister@cityofcapecanaveral.org); [Don Willis](mailto:Don.Willis@cityofcapecanaveral.org); dyonts@grantvalkaria.org; haljrose@bellsouth.net; hvoltz@westmelbourne.gov; [James Alex Goins](mailto:James.Alex.Goins@cityofcapecanaveral.org); [Jeremy Hutcherson](mailto:Jeremy.Hutcherson@cityofcapecanaveral.org); [Jodi Rozycki](mailto:Jodi.Rozycki@cityofcapecanaveral.org); [Joe Robinson](mailto:Joe.Robinson@cityofcapecanaveral.org); [Karalyn Woulas](mailto:Karalyn.Woulas@cityofcapecanaveral.org); [Kenny Johnson](mailto:Kenny.Johnson@cityofcapecanaveral.org); [Kim Davis](mailto:Kim.Davis@cityofcapecanaveral.org); [Lisette Kolar](mailto:Lisette.Kolar@cityofcapecanaveral.org); [Loren Strand](mailto:Loren.Strand@cityofcapecanaveral.org); [Mark Ryan](mailto:Mark.Ryan@cityofcapecanaveral.org); mgibson@satellitebeach.org; [Michael Blake](mailto:Michael.Blake@cityofcapecanaveral.org); mmiller3243@bellsouth.net; [Pat Burke](mailto:Pat.Burke@cityofcapecanaveral.org); [Pat Reilly](mailto:Pat.Reilly@cityofcapecanaveral.org); pbentley@westmelbourne.gov; PGougelman@wsh-law.com; [Rachael Bassett](mailto:Rachael.Bassett@cityofcapecanaveral.org); [Rob Medina](mailto:Rob.Medina@cityofcapecanaveral.org); sclcnancy@gmail.com; [Shaun Ferguson](mailto:Shaun.Ferguson@cityofcapecanaveral.org); [Shauna Hume](mailto:Shauna.Hume@cityofcapecanaveral.org); [Sherrie Quarrie](mailto:Sherrie.Quarrie@cityofcapecanaveral.org); smartin@cityofrockledge.org; stu@stuglass.com; [Susan Ditty](mailto:Susan.Ditty@cityofcapecanaveral.org); thartselle@cityofrockledge.org; [Yvonne Minus](mailto:Yvonne.Minus@cityofcapecanaveral.org)
Subject: SCLOC Scheduled Form 6 Meeting
Date: Saturday, February 17, 2024 1:20:46 PM
Importance: High

To: SCLOC Municipals Contacts

Please advise me the number of individuals from your municipality that will be attending the Form 6 meeting:

Scheduled Form 6 meeting

Date: Monday March 18, 2024

Location: Cocoa Civic Center, 430 Delannoy Ave, Cocoa, FL

Time: 6:00pm

Speaker: Steven Zuilkowski, Deputy Executive Director & General Council, Florida Commission on Ethics

Please let me know if you have any questions,

Sheila

Space Coast League of Cities
Sheila Donahue, Executive Director
E-mail: execsec@scloc.org
Phone: 321-421-7171
Website: www.scloc.org



Home >> Calendar



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March 2024

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Filter by Type:

- Any -

Department/Board/Committee:

Department/Board Home Page
 American Rescue Plan Act

Apply

Sun	Mon	Tue	Wed	Thu	Fri	Sat
25	26	27	28	29	1	2
3	4 Regular Town Council Meeting 7:30pm to 9:30pm	5	6	7	8	9
10	11	12 Trails & Greenways Committee Meeting 6:00pm to 8:00pm	13 Planning and Zoning Board Meeting 6:00pm to 8:00pm	14	15	16
17	18 Regular Town Council Meeting 7:30pm	19	20 Parks & Recreation Board Meeting 5:00pm to 6:00pm	21	22	23
24	25	26	27 Planning and Zoning Board Meeting 6:00pm to 8:00pm	28	29	30
31	1	2	3	4	5	6

