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SPECIAL TERMS AND CONDITIONS:

1. INTENT AND SCOPE OF WORK

It is the intent of these specifications to obtain bids and enter into a contract for all Labor, materials, equipment, and services necessary for and reasonably incidental for the full and complete execution of **Project Title** as further described in the bid documents and plans.

Town shall reserve the right to exercise the right to pursue Direct Owner purchases for major equipment. The Town of Palm Beach prefers to issue Direct Owner Purchase Orders to the Contractor's chosen Vendors so the Town of Palm Beach recognizes the sales tax savings. The Contractor, will remains fully responsible per the Contract Documents for the items being purchased directly by the Town with the exception of payment to the Vendors for the Purchase Order Amount. Contractor responsibility includes but is not limited to approval of Vendor Quotation for Town use in issuing Direct Purchase Order, Shop Drawings Processing, Handling, Storage, Job-Site Installation, Start-Up and Warranty.

2. CONTRACT PLANS AND SPECIFICATIONS

All Work performed shall be in accordance with the following documents hereby incorporated by reference:

A. Technical Specifications, issued by Kimley-Horn, dated December 2018.

B. Construction Plans, prepared by Kimley-Horn, dated December 2018.

C. Addenda as prepared by the Town of Palm Beach.

3. ALTERNATIVES/APPROVED EQUAL/DEVIATIONS

Unless otherwise specified, the mention of a particular manufacturer's brand name or number in the specifications does not imply that this particular product is the only one that will be considered for purchase. This reference is intended solely to designate the type or quality of merchandise that will be acceptable. Alternate offers will be considered and must include descriptive literature and/or specifications.

The determination as to whether any alternate product or service is or is not equal shall be made by the Engineer and such determination shall be final and binding upon all bidders.

Although the Town provides for the consideration of alternate bids, it reserves the right to make an award in the best interest of the Town, which award may not necessarily be given to the lowest bid offered.

The bidder shall be responsible for reading very carefully, and understanding completely, the requirements and the specifications of the items bid upon. Any deviation from specifications listed herein must be clearly indicated, otherwise it will be considered that items offered are in strict compliance with these specifications, and the successful bidder will be held responsible therefore; deviations must be explained in detail on an attached sheet(s) and itemized by number. Any item or items that do not meet Town specifications upon delivery will not be accepted and if the item cannot be brought up to specifications in a reasonable time, the bidder will be required to compensate the Town for the difference in price entailed in going to the next low bidder.

4. PRICES - DELIVERY POINT

All prices quoted shall be F.O.B., delivered to street site locations as designated by the Town. Delivery costs and charges shall be included in bid prices.

Payment will be made only for equipment/material received and services actually performed under the Contract and which conform to the requirements of the Contract Documents. Payment will not be made for submission of a bid or any work related in whole or in part thereto.

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All bid prices must be specified on the attached Bid Sheet. Where lump sums are requested on the Schedule of Bid Items, a schedule of values may be requested by the Town to aid with change orders and pay requests.

5. DISQUALIFICATION OF BIDDERS

Bidders may be disqualified for any of the following reasons:

- A. Interest by the same person in more than one bid.
- B. Collusion among or between bidders.
- C. Unbalanced bids; that is, bids in which the prices bid for some items are out of all proportions to those bid for others.
- D. Lack of responsibility on the part of bidders (for example, but without limitation, no bidder would be considered responsible who has failed to carry out any contract in which the Town has been directly or indirectly concerned).
- E. Lack of experience or capital, on the part of bidders. Evidence of experience, ability, and financial standing, as well as a statement regarding plant and machinery available may be required of any or all bidders. Failure of the contractor to possess an occupational license which will allow the contractor to obtain the required permits or have the ability to obtain a Town of Palm Beach Occupational License within 14 calendar days to perform the work specified.
- F. Submission of a non-responsive bid.

6. CONTRACTUAL AGREEMENT:

This Invitation to Bid shall be included and incorporated in the final award. The order of contractual precedence will be this Contract, bid document and response. Any and all legal actions to enforce the award or any rights or obligations related to or arising out of or related to this Contract shall be filed in a court of competent jurisdiction in Palm Beach County, Florida, and the contractual obligations will be interpreted according to the laws of Florida. Any contractual provision proposed by a bidder and which bidder will require to be included in this Contract if awarded the Project, must be endorsed at time of bid response submittal. The Town reserves the right to reject a bid or to refuse an award based on any contractual provision proposed by a bidder but unacceptable to the Town.

7. FAMILIARITY WITH LAWS AND REGULATIONS

The bidder acknowledges and represents to the Town that bidder is familiar, can comply with, and will exercise reasonable care to see that all Federal, State, County, and Municipal laws and ordinances are observed, by the bidder direct or indirect employees, agents, subcontractors, suppliers and material men.

8. PERMITS, LICENSES, AND CONTRACTOR REGISTRATION

All such permits, licenses and other prerequisites, as may be necessary or become necessary in order to comply with State and Local laws for the operation of hauling equipment or the operation of hauling work, shall be provided by the Contractor at his own expense.

The Contractor and all subcontractors shall obtain Town Building and Right-Of-Way permits (where applicable) although the Town shall not require Contractor and the subcontractors to pay a fee therefore, provided all other requirements for their issuance are met. Contractor and subcontractors must be registered by the Town and each acknowledge they understand that registering in the Town may take up to ten (10) working days. The Contractor and all sub-contractors agree that time required to obtain registration will not be considered as a reason for a Time Extension. If the Contractor and subcontractor meets all Town requirements, the Town will issue a Job Specific Registration at no cost to the Contractor and subcontractor.

Each vehicle operator employed in the prosecution of this Contract shall possess a valid, legal State of Florida operators or chauffeurs license, whichever is applicable for the vehicle being operated or its use. Each vehicle employed in the prosecution of the contract shall be provided with such licenses and documentation as may be required to comply with State and Local laws.

All OSHA Standards, Rules and/or Regulations will apply to any item(s) of equipment or materials/supplies supplied or used in connection with this Contract.

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9. AVAILABILITY OF FUNDS

The obligations of the Town under any award of the Contract to a successful bidder are subject to the availability of funds lawfully appropriated for its purpose by the Town.

10. SUPERINTENDENCE BY THE CONTRACTOR

At all times during performance of this Contract and until the Work is completed and accepted, the Contractor shall directly supervise the work or assign and have on the Work site a competent superintendent who has authority to act for the Contractor and is satisfactory to the Engineer.

11. SITE OF WORK AREA

The physical location of the Work is illustrated on the attached drawings.

12. SITE INVESTIGATION/CONDITIONS AFFECTING THE WORK

- (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited (1) conditions bearing upon transportation, disposal, handling and storage of materials, (2) the availability of labor, water, electric power, and roads, (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site, (4) the conformation and conditions of the ground, and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonable ascertainable from an inspection of the site, including all exploratory work done by the Town of Palm Beach, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the Town of Palm Beach.
- (b) The Town of Palm Beach shall not be responsible for any conclusions or interpretations made by the Contractor based on the information made available by the Town. The Town is not responsible for any understanding reached or representation made concerning conditions which can affect the Work by any of Contractor's officers, employees, agents, subcontractors, material men, or suppliers before execution of this contract, unless that understanding or representation is expressly stated in this Contract.

13. DIFFERING SITE CONDITIONS

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Engineer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- (b) The Engineer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment of the contract price shall be made by written Change Order.
- (c) No request by the Contractor for a Change Order under this clause shall be allowed, unless the Contractor has given the written notice required, provided that the time prescribed in (a) above for giving written notice may be extended by the Town.
- (d) No request by the Contractor for a Change Order for differing site conditions shall be allowed if made after Final Payment under this contract.

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14. BID EVALUATION

Bids received shall be evaluated by the Town for compliance with General and Technical requirements contained herein.

The Town reserves the right to accept or to reject any or all bids and to make the award to that bidder, who in the opinion of the Town will be in the best interest of and/or the most advantageous to the Town. The Town also reserves the right to reject the bid of any vendor who has previously failed in the proper performance of an award or to deliver on time contracts of a similar nature or who is not in a position to perform properly under this award. The Town reserves the right to inspect all facilities of bidders in order to make a determination as to the foregoing. The Town of Palm Beach reserves the right to waive any irregularities and technicalities and may, at its discretion, request a re-bid.

15. AWARD OF CONTRACT

The Town of Palm Beach reserves the right to award on an ["All-or-None" basis to one bidder or to award on a "Lot-by-Lot"] basis whenever it is in the best interest of and/or most advantageous to the Town of Palm Beach.

The quantities shown are estimated as annual requirements. The Town of Palm Beach reserves the right to increase or decrease the total quantities as necessary to meet actual requirements.

The Town reserves the right to reject any and all bids, to waive any and all informalities. If a contract is awarded, the Town will give the successful bidder a Notice of Award within 90 days after the day of the Bid Opening. The successful bidder must return the signed Contract, recorded and certified performance and payment bonds, and a certificate of insurance, all conforming to the requirements of the Contract Documents, within 15 calendar days after the date of the Notice of Award. The time for execution of the Contract and provision of the recorded and certified performance and payment bonds may be extended by the Town for good cause shown. Contractor shall provide the Town with a certified copy of the recorded bond before issuance of a Purchase Order and commencement of work. Failure to provide the foregoing signed Contract, acceptable bonds, certified copy of recorded bond, and insurance certificates within this time limit shall be just cause for annulment of the award and forfeiture of bidder's security. The Town may then award the bid to the next lowest responsible bidder.

16. USE OF CONTRACTOR'S OWN FORCES

The Bidder may be asked to identify the value of the Work performed, with its own employees and equipment and not through the use of subcontractors or independent contractors. On request of the Town, the Contractor shall make its payroll records, superintendent's logs and job reports, employee time records, and invoices for purchase or rental of supplies, materials and equipment available for review by the Town.

17. DEFINITION OF TERMS

APPROVED EQUAL:

When reference is made in the specifications to trade names or name of manufacturer's, such references are made solely to designate and identify the quality or design of material or equipment to be furnished, and are not intended to restrict competitive bidding.

CONTRACT AMOUNT:

On the Award to the Contractor, the Contractor's bid amount shall be the Contract Amount. Thereafter, the Contract Amount shall remain the same and will be increased or reduced only by written Change Order signed by the Contractor, Town and Engineer pursuant to paragraph 58 of this Contract.

CONTRACT DOCUMENTS:

All those documents listed in the Table of Contents, including but not limited to: "Invitation to Bid," "Instructions to Bidder," "Pre-qualification Questionnaire," "Bid," "Schedule of Bid Items," "Bid Performance and Payment Bond," "General Terms and Conditions," "Technical Specifications," "Drawings," and "Addendum" and the Contract.

EQUIVALENT:

Shall be taken in its general sense and not mean identical.

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<u>ENGINEER:</u>	The person, firm, or corporation identified as such in the Contract Documents; absent such designations in the Contract Documents, the Town Engineer.
<u>OWNER:</u>	Town of Palm Beach, Florida (sometimes herein the "Town").
<u>CONTRACTOR:</u>	The individual, firm, partnership or corporation entering into this Contract to perform the Work specified herein. For bidding purposes references herein to the "contractor," "vendor," and "bidder" are synonymous.
<u>NOTICE TO PROCEED:</u>	A written notice given by the Engineer to the Contractor fixing the date on which the Contract Time will commence to run and on which the contractor shall start to perform Contractor's obligations under the Contract Documents.
<u>PROJECT FIELD REPRESENTATIVE:</u>	An authorized representative of the Public Works Department or consultant assigned to observe any of the materials or workmanship entering into the work.

18. PROJECT MEETINGS

A. PRECONSTRUCTION CONFERENCE

The Town will hold a preconstruction conference at a time and place of its choosing. The successful bidder will be notified and will be required to attend. The notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

B. PROGRESS MEETINGS

The Contractor shall conduct progress meetings at regular intervals as may be required by the Engineer.

19. SCHEDULES FOR CONSTRUCTION CONTRACTS

(a) The Contractor shall, within ten (10) days after issuance of the Notice to Proceed, prepare and submit to the Engineer for approval, a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the different features of the work (including acquiring materials, plant, and equipment). The schedule shall be submitted electronically, using Microsoft Project, latest version, which will accurately indicate the percentage of the work scheduled for completion by any given date during the period. The schedule shall include the listing of significant milestones provided by the Town, including all actions necessary to accomplish each milestone on time. If the Contractor fails to submit a schedule within the time proscribed or fails to submit revised or updated schedules pursuant to paragraph (b) below, in addition to, and not in lieu of the other remedies available under this Contract to the Town, the Town may withhold Progress Payments until the Contractor submits the required schedule(s).

(b) As work progresses on the contract, the Contractor shall enter the actual progress on the schedule and provide a two week look ahead at each construction progress meeting via electronically in an email and hard copy, to the Engineer. If, in the opinion of the Engineer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Engineer, without additional cost to the Town. In this circumstance, the Engineer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction equipment, and to submit for approval any supplementary schedules in electronic form as the Engineer deems necessary to demonstrate how the approved rate of progress will be regained.

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20. CONTRACT TIME

The Contractor shall commence the Work under this Contract by **May 1, 2019** and prosecute the work diligently thereafter to enable **Final Completion to be achieved not later than October 31, 2019 pursuant to paragraph 57 and 59 below**; subject to any approved Change Order(s) extending the time of completion) pursuant to the provisions of paragraph 22 below.

21. STAND DOWN FOR "THE SEASON"

Contractor hereby agrees that if the Work does not achieve Completion by October 27, 2019, or in the event the Town informs Contractor that the Town has determined that based on the progress of the Work to date that Completion will not be achieved by October 27, 2019, then Contractor shall proceed at once to restore (the "Restoration") the areas of the Town where the Work is being performed to allow those areas to be efficiently, lawfully and safely used for the purposes for which they have been used prior to the onset of the Work in such a manner that the Restoration will be complete in full and Contractor and its subcontractors will have demobilized and be off the work site on or before November 10, 2019. Thereafter, Contractor and subcontractors shall be fully remobilized and shall recommence completion of the Work at the Work Site on May 1, 2020. In the event the Contractor believes that the Stand Down For The Season resulted from events or acts or omissions of others wholly beyond control of the Contractor and Contractor's subcontractors and suppliers of any tier, the Contractor may seek to have the cost of the Restoration added to the Contract Amount by application for a Change Order. The Contractor shall proceed with the Restoration and diligently prosecute the Work after the Stand Down for The Season, notwithstanding that any such Change Order remains under consideration, or the existence of any dispute of the Contractor's entitlement to the same. As provided in the "No Damages for Delay" provisions of this Contract, Contractor shall bear, without claim or reimbursement from Town, all of Contractor's direct and indirect costs and damages arising out of or relating to the delay resulting from the work suspension for the Season, including without limitation, Demobilization of Contractor and its subcontractors, Remobilization of Contractor and its subcontractors and diminished productivity and inefficiency claims. No Liquidated Damages shall be charged the Contractor from the date Restoration is complete to May 1 of the following year. The Town's right to liquidated damages, shall recommence May 1 of the year following the Restoration and continue each day until Completion is achieved. Contractor acknowledges it is aware of the requirement of this Contract that the Work be suspended from December 1 to May 1 of the following year ("the Season") and solely assumes the foregoing risks and limitations on recovery of related costs and damages.

22. EXTENSIONS OF TIME

If the Work is at any time delayed by any cause of whatsoever nature beyond the Contractor's control, then the time for completion of the Work shall be extended by a Change Order for such reasonable time as the Engineer with the agreement of the Town may determine. An Extension of Time may provide an extension only to specific elements of the Work, and any approved change thereto, with the time for all other portions of the Work remaining unaltered. The sole manner of the Contractor to obtain a Change Order for an Extension of Time is for the Contractor to strictly comply with the provisions of paragraph 56 and 58 below regarding Change Orders.

23. NO DAMAGE FOR DELAY

Events Which Delay the Work

If Events occur which delay the Work, including without limitation:

- a. Any act or omission on the part of the Town or the Engineer or any other Contractor employed by the Town, or of any governmental official or any other person or entity whatsoever, or any of their officers, agents or employees with respect to drawings, plans or specifications, changes in sequence, lack of decision, acceleration, deceleration, lack of access, lack of right-of-way or easement, interference, errors, suspensions, lack of approvals, erroneous bid specifications, lack of payments, issuance of Change Orders or delay in issuance of the same;
- b. Delay or obstruction of occupancy, or use or placement into service of the building, structure, equipment, appurtenances to be constructed hereunder prior to file a completion and acceptance of the Work;
- c. Unanticipated or significantly differing site or field conditions;
- d. Presence or absence and operations of other contractors, subcontractors or third parties;
- e. Strikes, lockouts, labor shortages;

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- f. Fire;
  - g. Unusual delay in transportation or freight embargos;
  - h. Unavailability of specified equipment or materials or other material shortages or delays in delivery of whatsoever nature;
  - i. Epidemics or quarantine restrictions;
  - j. War, riots, acts of terrorism, violence or civil disobedience;
  - k. Acts of God, hurricanes, tropical storms, tornados, earthquakes, floods, or extreme or unseasonable weather, and whether such Events and delays be avoidable or unavoidable, Contractor agrees that the sole recourse of the Contractor will be to seek and obtain (if appropriate) a time extension by Change Order as provided in this Contract. Thus, regardless of the actual source or cause of the period of delay, Contractor agrees that Contractor shall make no claim for, nor be entitled to, any damages, whether actual, consequential or of any other nature whatsoever, including without limitation: acceleration, deceleration, disruption, mitigation of liquidated damages, loss or reduction of the Early Completion Bonus, increases in time related costs, escalation in material costs, reduction in material volume, escalation in labor costs, additional equipment, additional labor, effect on other contracts, increased Contractor premiums, lost or lower labor or other productivity, lost alternative income, additional labor headcount, additional premium labor time, additional supervision, extended home office overhead and demobilization and mobilization costs. Contractor specifically assumes the cost and risk of the foregoing and agrees to accept any extension of time due Contractor under the provisions of this Contract in full and complete recognition and satisfaction of the same.

24. WORK BY OTHER CONTRACTORS

The Town has the right, but not the obligation, to perform work, construction or operations related to the Work to be performed under this Contract either using its own forces or through separate contracts with others, notwithstanding that the work involved is the same or substantially of the same nature as that under this Contract and is work that Contractor could perform and was ready, willing and able to perform.

SUBLETTING OR ASSIGNMENT CONTRACTS:

All awards will be made with the understanding that the work will be performed by the contractor to whom the award is made, with the assistance of workmen, under his immediate superintendence. The Contractor acknowledges that if it is awarded the Contract such award has been based on its performance in competitive bidding and the Town's evaluation of the Contractor's particular qualifications and skills for the project. As a result, this Contract may not be sublet or assigned to another contractor except with written consent of the Town which consent may be withheld by the Town for any reason whatsoever in the Town's sole discretion. In no event will the contractor be released from its obligations and responsibilities under this Contract even in the event of an approved assignment or subletting.

SUBCONTRACTING:

If a bidder must subcontract any portion of this Contract for any reason, it must provide in its bid documents the name and address of each subcontractor and the name and telephone number of the contact person with authority to act on behalf of each subcontractor. The Town reserves the right to accept or reject any or all bids wherein a subcontractor is named and to make the award of this Contract to the bidder, who, in the opinion of the Town, will be in the best interest of and/or the most advantageous to the Town. The Town also reserves the right to reject a bid of any bidder if the bid names a subcontractor who has previously failed in the proper performance of an award or failed to deliver on time contracts of a similar nature, or who is not in a position to perform properly under this award. The Town reserves the right to inspect all facilities of any subcontractors in order to make determination as to the foregoing. Bidders are encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

25. PASS THROUGH OF OBLIGATIONS TO SUBCONTRACTORS

The Contractor warrants to the Town that it will provide a copy of this Contract and all of the Contract Documents for review by its subcontractors and will require in each of Contractor's contracts with its subcontractors that the subcontractor assume toward the Contractor all of the obligations and responsibilities with regard to those portions of the Work being performed by the subcontractor, which the Contractor has assumed toward the Town in this Contract and in the Contract Documents.



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26. MATERIAL AND WORKMANSHIP

- (a) All equipment, material, and articles incorporated into the Work shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Engineer, is equal or better to that named in the specifications, unless otherwise specifically provided in this contract.
- (b) The Contractor shall obtain the Engineer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Engineer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this Contract or by the Engineer, the Contractor shall also obtain the Engineer's approval of the material or the articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection and Contractor assumes all risk, costs and damages in that regard.
- (c) All work under this contract shall be performed in a skillful and workmanlike manner. The Town of Palm Beach may require, in writing, that the Contractor removes from the work any employee the Town deems incompetent, careless, or otherwise objectionable.

27. WARRANTY OF CONSTRUCTION

- (a) In addition to any other warranties required by the Contract Documents, the Contractor warrants, except as conforms to the requirements of the Contract Documents and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of one year from the date of Final Completion of the Work and its acceptance by the Town.
- (c) The Contractor shall remedy, at the Contractor's expense, any failure to conform to the requirements of the Contract Documents, or any defect in the Work. In addition, the Contractor shall remedy at the Contractor's expense, any damage to Town-owned or controlled real or personal property, when that damage is the result of—
  - (1) The Contractor's failure to conform to contract requirements of the Contract Documents; or
  - (2) Any defect of equipment, material, workmanship, or design furnished by the Contractor or Contractor's subcontractor or suppliers of any tier.
- (d) The Contractor shall restore any portion of the Work damaged in fulfilling Contractor's warranty obligations hereunder. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.
- (e) The Town shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure of the Contractor to meet the requirements of the Contract Documents or defect, or damage.
- (f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials and equipment furnished under this contract, the Contractor shall -
  - (1) Obtain and provide to the Town all warranties required by the plans and specifications that would be given in normal commercial practice of the Contractor to meet the requirements of the Contract Documents; or
  - (2) Require all warranties to be executed, in writing for the benefit of the Town, if so directed by the Engineer, and

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- (3) Enforce all warranties for the benefit of the Town, if so directed by the Engineer.
  - (g) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Town may bring suit at its expense to enforce a subcontractor's, manufacturer's, or suppliers warranty.
  - (h) This warranty shall not limit the Town's rights under the Inspection and Acceptance clause of the contract with respect to latent defects, gross mistakes, or fraud.

28. INSPECTION OF CONSTRUCTION

- (a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work conforms to the requirements of the Contract Documents. The Contractor shall maintain complete inspection records and make them available to the Town. All work is subject to inspection and test at all places and at all reasonable times by the Engineer before acceptance to ensure strict compliance with the terms of the contract.
- (c) Inspections and tests by the Engineer are for the sole benefit of the Town and do not:
  - (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
  - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
  - (3) Constitute or imply acceptance;
  - (4) Affect the continuing rights of the Town after acceptance of the completed work under paragraph (g) below;or
  - (5) Relieve Contractor or any other party from Warranty obligations.
- (d) The presence or absence of a Town inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Engineer's written authorization.
- (e) The Contractor shall promptly furnish, at no increase in contract price, 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 re-inspection or retest necessary. The Town shall perform all inspections or 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.
- (f) The Contractor shall, without charge, replace or correct work found by the Town not to conform to contract requirements, unless in the public interest, the Town consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (g) If, before acceptance of the entire work, the Town decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Town shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, a Time Extension.

29. RIGHT OF TOWN TO PERFORM WORK AND BACK CHARGE CONTRACTOR

In addition to, and not in lieu of, any other remedy available to the Town under this Agreement, (including without limitation any right to terminate the Contract), if the Contractor fails, neglects or refuses to carry out the Work in accordance with the requirements of this Agreement within a five (5) day period after the Town's written notice to immediately commence and properly continue to cure such default, the Town may proceed without further notice to the Contractor through the Town's own forces, or others to correct the deficiency in the performance of the Work and deduct the costs thereof, including without limitation any compensation for engineering or architectural services reasonably required, from the Unpaid Bid Amount and any payments due or which thereafter become due the Contractor.

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30. DESIGNATION OF EMERGENCY CONTACT PERSON

Before commencing the Work, the Contractor and each subcontractor shall provide the Engineer with the name of an Emergency Contact Person along with a cellular phone or other telephone number through which that Emergency Contact Person can be reached during non-working hours, including without limitation weekends and holidays.

31. PRESERVATION OF PROPERTY

The Contractor shall preserve from damage, all property entrusted to his care at construction site. This section, among other things, applies to public utilities, trees, landscaping, monuments, fences, walls and similar improvements. If any such property is accidentally damaged due to the activities of the contractor, shall be immediately restored to its original condition at the sole expense of the contractor.

32. DAMAGE TO PERSONS OR PROPERTY

The Contractor shall at all times guard against damage or loss to the property of the Town of Palm Beach, other contractors, and other parties including, without limitation, Town residents and the general public, and shall be responsible for repairing, replacing or otherwise satisfying in full all claims for loss or damage which may be claimed to have been caused during the contract performance ("Contractor Damage Claims"). The Contractor Damage Claims shall be settled directly by the Contractor within 14 business days of receipt of the claim or shall be submitted to the Contractor's insurance carrier(s) within five (5) business days from receipt of claim being filed with the Contractor and in the event, the insurance carrier determines liability on the Contractor, the claim for such damage shall be paid within thirty (30) days of such determination by the contractor's insurance carrier.

Claims status shall be an item which is placed on every agenda for the periodic progress meetings between the Project Engineer/Project Manager and the Contractor. In addition, Contractor shall provide the Town with a written status report for any new or outstanding Contractor Damage Claims submitted with every pay request. The name, title, phone number, e-mail address and mailing address of the Contractor's representative responsible for handling Contractor Damage Claims shall also be provided with every pay request. Should there be no new or outstanding Contractor Damage Claims the contractor shall state the same in the required written status report.

The Town may withhold payment, or make such deductions as the Town deems necessary or appropriate, to insure prompt reimbursement, repair or replacement of loss or damage to persons or property in the settlement of Contractor Damage Claims resulting from the actions of Contractor, Contractor's subcontractors, sub subcontractors, from material men and suppliers of any tier and their employees and agents.

The responsibility for all damages to person or property arising out of or on account of the Work done under this Contract shall rest on the Contractor and the Contractor shall indemnify the Town and others as provided by the provisions of paragraph 42 Indemnification herein.

The foregoing provisions of this paragraph are for protection of the Town are not intended to, and shall not inure to the benefit of any actual or alleged claimant or any other party, or obligate the Town to repair, replace or make reimbursement any alleged such damage or to adjust, settle or pay any Contract Damage Claims or other claims that are the obligation of the Contractor under this Contract.

33. DIGITAL RECORD DRAWING / AS-BUILT DRAWING SUBMITTAL

33.1 OVERVIEW

33.1.1 Prior to acceptance of the utility portions of the project by TOWN, the CONTRACTOR must submit a digital copy of the record drawings in CAD or GIS format. As a minimum, these files shall meet the criteria as described in this document. Deviations from these guidelines will be allowed only by written permission from the TOWN.

33.1.2 Initial CAD / GIS submittals must be delivered to TOWN in an electronic format with the paper record drawings. E-mail and/or ftp submittals are not acceptable for initial submittals. E-mail and/or ftp are only to be used to resubmit if and only if corrections to the GIS data are requested by TOWN. Use of E-mail and/or ftp to re-submit GIS data must be approved by the TOWN in advance.

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### 33.2 COORDINATE SYSTEM

The term 'coordinate' or 'coordinates' mean northing and easting values in the Florida East Zone / North American Datum, NAD 83-90 High Accuracy Reference Network, HARN Feet State Plane Coordinate System. Coordinates shall be accurate to the nearest tenth of a foot and shown to a precision of the nearest tenth of a foot.

All elevations will be based on NAVD (National American Vertical Datum)

### 33.3 MINIMUM AS-BUILT AND RECORD DRAWING REQUIREMENTS

Drawings are to show as constructed information, not document changes between the design and construction. Any TOWN facilities constructed in a horizontal or vertical location different (one-tenth foot horizontal, one-tenth foot vertical) than the design location will have their design location erased and will be redrafted at the constructed location. All information that is incorrect due to changes during construction will be corrected. Incorrect information will not be struck through; it will be erased and replaced with the corrected information. Any information that is no longer relevant due to changes during construction will be deleted. Design drawing dimensioning to potable, reuse, wastewater and stormwater facilities will be corrected as necessary.

### 33.4 MINIMUM AS-BUILT AND RECORD DRAWING CONTENTS

All information on the drawings must be clear and understandable to TOWN. The record drawings will show at a minimum for all systems:

Show existing systems where new infrastructure ties in.

Show new systems in entirety including pipes, lines, conduits, vertical and horizontal deflections, connections, valves, risers, poles, casings, pads, manholes, boxes, any and all appurtenances and specialty features.

Either label or clearly show in a legend each feature as described above.

If TOWN has an identification convention for features, the features will be labeled with the same identification as used by TOWN.

Show all abandoned-in-place facilities including the extent and method of abandonment.

Show elevations including all top of pipe for pressure pipes and conduits at deflection points and 50ft intervals, pipe inverts at connections to structures, separations at pipe crossings, manhole lids and rims, top slabs and pads, bottom of structures, control set points and any other necessary elevations.

Each pipe will be marked with its size and type of material. Gravity pipes will also be marked with their length and slope. Each fitting will be marked with its size and type (i.e. 45 degree bend or 6X8 Tee). Each fitting will be marked with its material if the material is different than the main's material. Valves will be marked with their size and type. Each service line will be marked with its size and material.

### 33.5 DIGITAL CAD SUBMITTAL REQUIREMENTS

If the record drawing submittal is in CAD format, the following criteria must be met.

Version AutoCAD 2008 or later. Files shall be submitted as an "etransmit" file which will include all DWG, XML, SHX, TIFF, BITMAP, JPEG, CTB (Plot Style Table), all External Reference Files, Font Files, Texture Files, Files from Data Links, Photometric Web Files and any other files which are included in the CAD Drawing. All included in the submitted ZIP file.

The CD label shall include the following:

- a. Company Name with prepared by statement
- b. Contact person / position
- c. Project Name

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- d. Date that data is burnt onto CD
  - e. Designate CD as As-built, Construction Plan or Other

The CAD drawing will have separate layers representing different features as described below. Separate layers will be provided for all systems. Separate layers will be provided for new or adjusted, existing in place and abandoned facilities. Separate layers will be provided for TOWN owned systems and private systems. At a minimum, separate layers will be required for:

Site Plan

- Roadway
- Striping
- Buildings
- Curbing
- Sidewalks
- ADA Ramps
- Roadway Special Features

Wastewater Collection

- Gravity Lines
- Manholes
- Cleanouts
- Pressure Mains
- Pump Stations

Stormwater

- Gravity Lines
- Structures
- Pressure Mains
- Pump Stations

Electrical

- Lines / Conduits
- Manholes / Boxes
- Poles
- Features: Generators / ATS / Transformers / Switch Cabinets / Panels

Other Utilities

- Telephone
- Cable

All CAD lines will be snapped to end features. Lines will be continuous starting at one feature and ending at another feature. Lines will start and stop at fittings but be continuous through pipe deflections, lateral and service connections. Gravity and Drainage lines will start and stop at structures but be continuous through laterals. There will be no duplicate lines representing one feature.

### 33.6 DIGITAL GIS SUBMITTAL REQUIREMENTS

Digital submittals in GIS format will be acceptable to the TOWN in lieu of CAD drawings. The TOWN will provide a blank schema to facilitate this process.

### 34. SHOP DRAWINGS, SAMPLES AND SUBMITTALS

To the extent required by the plans and specifications, the Contractor shall prepare and submit to the Engineer (or Architect, if applicable), shop drawings, product specifications, samples and similar submittals in a manner that will allow reasonable time for review so as not to cause any delay in the work. Approval of the same by the Engineer (or Architect,

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if applicable) shall not relieve the Contractor from errors or deviations from the Contract Documents in any manner including without limitation, any errors in the submittals themselves, or in Contractor's performance of the Work. Immediately upon receipt of the Notice to Proceed, the Contractor shall submit a schedule of Shop Drawings and Samples to the Engineer for approval. After checking and verifying all field measurements, the Contractor shall submit to the Engineer for review and approval five copies of each submittal listed in the schedule of Shop Drawings. The Contractor shall coordinate the submittal preparation with performance of construction activities and necessary lead time for order materials. The Contractor must allow at least two weeks for processing. No extension of time will be authorized because of failure to transmit submittals sufficiently in advance of the Work to permit processing and approvals required for timely ordering of materials.

35. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT

Bidder certifies that all material, supplies, equipment and other goods or services, contained in its bid meets all O.S.H.A. requirements. Bidder further certifies that, if it is the successful bidder, and any material, supplies, equipment and other goods or services, delivered is subsequently found to be deficient in any O.S.H.A. requirement in effect on date of delivery, all costs necessary to bring the same into compliance with the aforementioned requirements shall be borne by the bidder.

36. PUBLIC SAFETY AND CONVENIENCE

Contractor's use of streets and highways for the work to be done under this Contract shall conform to all Municipal, County, State and Federal laws and regulations as applicable.

The Contractor shall at all times so conduct its work so as to insure the least possible obstruction to normal pedestrian and vehicular traffic including access to all public and private properties during all stages of construction, and inconvenience to the general public and the residents in the vicinity of the work, and to insure the protection of persons and property, in a manner satisfactory to the Engineer.

No more than one-half (1/2) of the road or street shall be closed and traffic shall be controlled, so as to provide minimum hindrance.

There shall be no obstruction of the travel lanes between the hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. without approval from the Engineer.

No road or street shall be closed to the public, except with the permission of the Town's Director of Public Works and other proper governmental authorities. Fire hydrants on or adjacent to the work shall be kept accessible to fire-fighting equipment at all times. Temporary provisions shall be made by the Contractor to insure the use of sidewalks, public telephones and the proper functioning of all gutters, sewer inlets, drainage ditches, and irrigation ditches.

37. HOURS FOR CONSTRUCTION WORK, OPERATION OF CERTAIN EQUIPMENT

Contractor shall comply with Sections 42-198 & 42-199, and Sections 42-226 thru 229 of the Town Code which regulate noise, equipment operation, and work hours. Contractor is obligated to be familiar and comply with all Town ordinances and regulations pertaining to construction operations. The following Hours of Operation must be followed, unless specific construction contract exceptions are made:

**In Season** (Monday before Thanksgiving thru April 30th):

- No Construction or Landscaping on Sundays, legal holidays, including the Friday after Thanksgiving
- Construction and Landscaping allowed Monday – Friday, 9:00 a.m. to 5:00 p.m.
- Construction and Landscaping, quiet work only allowed Monday– Friday, 8:00 a.m. to 9:00 a.m.
- Construction and Landscaping, quiet work only allowed- Saturday – 9:00 a.m. to 5:00 p.m.

**All other** times of the year:

- No Construction or Landscaping on Sundays, legal holidays, including the Friday after Thanksgiving
- Construction and Landscaping allowed Monday – Friday, 9:00 a.m. to 6:00 p.m.
- Construction and Landscaping, quiet work only allowed Monday – Friday, 8:00 a.m. to 9:00 a.m.
- Construction and Landscaping, quiet work only allowed Saturday – 9:00 a.m. to 5:00 p.m.

Quiet work means work not tending to disturb people in the vicinity thereof.

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38. DISPUTE RESOLUTION

The Engineer is hereby designated as the direct representative of the Town, and he/she shall settle all disputes or questions of doubt that may arise as to the meaning of any clause in these specifications, or methods of prosecution of the Contract, and his/her decision shall be final and conclusive.

39. BEST MANAGEMENT PRACTICES

The Contractor is required to keep dirt, debris and waste materials out of the storm/sanitary sewer systems. An approved filter fabric must cover all catch basins in the construction area and sand bags, or suitable barriers, must be utilized in hooded curbs, catch basins, manhole structures and pipe so as to prevent dirt and debris from entering the sewer system. An inspection of downstream pipes and pump station will be made prior to the commencement of construction to determine the condition of pipes and structures with regard to accumulated dirt and debris. A post construction inspection will be conducted to determine the extent of the system and associated pump station wet wells which the contractor is required to clean. The Contractor is required to submit a Best Management Practice Plan for approval by the Engineer and the Town prior to project commencement.

40. HAZARDOUS MATERIALS

Contractor shall be responsible for, and provide indemnity in accordance with paragraph 41 hereof, for all claims or damages relating to materials and substances brought to the site where the Work is being performed that are, or are alleged to be, hazardous to the health of persons, or to the environment unless such materials or substances were mandated with specificity by the Contract Documents.

41. CHARACTER OF WORKMEN AND EQUIPMENT

All equipment and workmen provided by the contractor for work hereunder, shall be the best available for the kind of work being performed. Any person employed by the Contractor whom the Engineer or his designee may deem temporarily or permanently incompetent or unfit to perform the work, shall under written instruction of the Engineer be removed from the job and such person shall not again be employed on the Work or allowed on the work site.

43. DEBRIS

Contractor shall be responsible for the prompt removal of all debris which is a result of performance of the Work, and to legally dispose of such.

44. BARRICADES, TEMPORARY SCAFFOLDS, STAGING AND SAFETY DEVICES

Contractor shall provide, erect, maintain and remove as required all barricades, traffic control signs, cones, scaffolding, sidewalk overhead pedestrian protection platforms, guards, railings, etc., as required by local/state authorities, codes or laws for the protection of workmen and the public.

45. CONTRACTOR'S SUBMISSION OF SCHEDULE OF VALUES

Within 10 days of being advised of the Award, Contractor shall provide a Schedule of Values allocating the Contract Amount among the various components of the Work to the Engineer for approval. The form of the Schedule of Values shall contain such line items making up the components of the Work and allocating to the line items percentages of the Contract Amount as may be satisfactory to the Engineer. The Schedule of Values shall also delineate what portions of the Work will be performed by Contractor and which by subcontractors. The Contractor shall provide backup information supporting the designation of line items and allocations of the Contract Amount contained in the Schedule of Values.

Upon the issuance of a written Change Order executed by each of the requisite parties, the work described in the Change Order shall be added to the Schedule of Values as a separate line item and payment therefore shall be made in future Progress Payments based on the percentage of completion of the Change Order work described as of the date of each Application.

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46. PROGRESS PAYMENTS

The Contractor's Applications for Progress Payments shall be based on, and include specific reference to, the percentages of completion of each component of the Work through the period covered by the Application based on the approved Schedule of Values. In addition to, and not in lieu of any other remedy available to the Town under this Contract, the Town may withhold Progress Payments from the Contractor until a satisfactory Schedule of Values is approved. To the extent the Schedule of Values is based on unit prices for components of the Work, the Unit Prices shall be inclusive of all the Contractor's costs attributable to that component, including, without limitation, all of Contractor's overhead and profit.

The Contractor shall make monthly applications for Progress Payments. A duplicate copy of each Application shall be submitted to the Town and the Engineer. The period covered by the Application shall be one (1) calendar month ending on the last day of the month. Each Application shall be based on the most recent Schedule of Values issued in connection with the Work and show the percentage of actual completion of each line item shown on the Schedule of Values. If the pay estimate and support data are not approved, the Contractor is required to submit new, revised or missing information according to the Owner's instructions. Otherwise, the Contractor shall prepare and submit to Owner an invoice in accordance with the actual completion of work. Owner will pay Contractor, in accordance with Florida Prompt Payment Act (FS 218.70) for all, or such portion of the Application that the Engineer (or Architect, if applicable) certifies as correctly representing the percentage status of completion of each component of the Work shown on this Schedule of Values as of the end of the period covered by the applications, less a retainage of ten percent (10%). The Town reserves the right to deny payment for materials stored on or off-site if the materials were delivered or stored without the Town's prior consent. The Town reserves the right to require that off-site material be stored in a local bonded warehouse.

If in the Application the Contractor seeks payment for materials and equipment that, with the permission of the Town, have been delivered to and stored at the Worksite for subsequent construction and installation, the Contractor's Application may include the Contractor's actual cost for such materials and equipment in the appropriate line item of the Application corresponding to the Schedule of Values. In no event will Applications include work, whether or not performed, that was either not included in the Work provided in the original Contract Documents, or that has been not authorized by a written, approved Change Order.

Contractor shall not to make advance payments to subcontractors, suppliers or material men for services, materials and equipment that have not been performed or delivered to the site of the Work. In no event shall the Contractor include or attempt to include payment for the same in any Application for a Progress Payment.

Progress payments shall also include updated project schedule showing progress of work. Payments may be delayed if the project schedule is not submitted and updated based on progress.

47. REQUIREMENTS FOR FINAL COMPLETION

The Work shall not be deemed to have achieved Final Completion until all obligations of the Contractor under this Contract have been fully performed including without limitation the following:

1. Completion of the Work in strict conformance with the plans, specifications and applicable Building Codes;
2. Completion of all punch list items;
3. Resolution of all construction claims made by subcontractors, materials and suppliers of any tier;
4. Provision of final lien releases from the Contractor and each subcontractor, material men and supplier of any tier;
5. The provision of complete and accurate "as built" drawings;
6. Completion of all required inspections by governmental officials and finalization of all required licenses and permits and the issuance of all related certificates of occupancy and final approvals;
7. Resolution of all pending Change Orders, including without limitation any requesting additions to the contract amount and Time Extensions;
8. Resolution of all disputes regarding Liquidated Damages, the applicability of an Early Completion Bonus and Contractor Damage Claims.
9. Consent of the surety, if any, to final payment.



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48. ACCEPTANCE OF FINAL COMPLETION AND FINAL PAYMENT

When the Contractor believes Final Completion has been achieved, the Contractor shall submit a requisition for Final Payment. Subject to the Contractor having complied with all other requirements of the Contract Documents for Final Completion, within 30 days from the Engineer's certification that Final Completion has been achieved, the Town shall pay to the Contractor, the remaining balance of the Contract Amount. Where Unit Prices were stated in the Schedule of Bid Items or Schedule of Values, the number of units is approximate and payment shall be made only for the number of units actually installed in completing the Work.

49. CHANGE ORDERS

Changes in the Work can only be authorized by Written Change Order or written Construction Directives. Time Extensions can only be authorized by Written Change Order.

All Change Orders must be in writing and signed by the Town and Engineer and Contractor. The Change Order shall describe the changes in the Work, if any, the amount of the adjustment, if any, in the Contract Amount and the adjustment, if any, in the time for the Work to achieve Completion and/or Final Completion. Contractor shall make written request for a Change Order to the Engineer and the Town within 2 business days of being informed by the Town or the Engineer of a proposed change in the Work, or within two (2) business days of any occurrence which in the Contractor's opinion represents a change in the Work or justifies the Contractor obtaining an Extension of Time for Completion and/or Final Completion. Failure to timely submit a written request for Change Order shall constitute Contractor's waiver of a claim therefore and good cause for the Engineer's denial of approval of the Change Order request. The Contractor's request for a Change Order shall be in writing and shall be submitted with sufficient backup information on pricing, staffing and impact on the Work Schedule to support the Contractor's request. The Contractor shall also supplement, on request of the Engineer, the materials submitted by Contractor in support of the Change Order. The Engineer and the Town shall acknowledge receipt of the Contractor's request for Change Order within 5 business days of receipt. If a written and duly executed Change Order has not been issued, the Contractor is not authorized to and shall not proceed with the work described in the Change Order unless the Contractor has received a written Construction Directive as described below. The Contractor shall not cease performing the Work on the basis that Change Orders are under review or on the basis that Change Orders have been denied or otherwise issued for amounts or in a manner not satisfactory to the Contractor, but shall use Contractor's best efforts to complete the Work and to conform to existing Work Schedules while resorting, if necessary and appropriate, to the remedies provided in this Contract or at law.

50. CONSTRUCTION DIRECTIVES

The Town and Contractor recognize there may be occasions where the Town and Engineer direct a change in the Work that may or may not justify the change in the Contract Amount or an extension or reduction of the Contract Time, but the change needs to be implemented prior to any adjustment to the Contract Amount or Contract Time having been determined or agreed by the parties. In such event, a written Construction Directive shall be prepared and signed by the Engineer and delivered to the Contractor. On receipt of the Construction Directive the Contractor shall proceed with the change in the Work without affect or change in this Contract pending the determination or mutual agreement, on the amount of any appropriate change to the Contract Amount or Contract Time. The Contractor shall provide to the Town, and the Engineer, documentation meeting the standards set out herein for Determining Adjustments To Contract Amount for Change Orders that Contractor believes is attributable to the subject Construction Directive and a statement, with reasonable backup documentation, of the change, if any, in the Contract Time that Contractor contends should be allowed by reason of the Construction Directive. The parties shall endeavor to determine reasonable compensation for the related to the Construction Directive work and to reach agreement on whether changes to the Contract Time are appropriate. If such agreement is reached, the provisions of the Construction Directives and the resulting agreement shall be incorporated into a Change Order and be signed by the Town, Contractor and Engineer. If the Contractor does not agree with the Contract Amount and/or any Contract Time adjustments as proposed by the Engineer and to which the Town has agreed, the Contract Amount and Contract Time shall be adjusted in the manner proposed by the Engineer and approved by the Town without prejudice to the Contractor pursuing any other remedy available to it under this Contract or at law.

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51. DETERMINING ADJUSTMENTS TO CONTRACT AMOUNT FOR CHANGE ORDERS

All adjustments in the Contract Amount by reason of a Change Order pursuant to any provisions of this Contract shall be determined either by agreement of the Contractor and the Town with the approval of the Engineer, or in the event an agreement cannot be reached, as provided below.

In the event a change in the Work relates to work bid in Unit Prices by the Contractor in its bid, it shall be presumed that any related addition or deletion to the Contract Amount shall be based on the same Unit Prices as used in the Contractor's bid and that those Unit Prices also include the Contractor's overhead and profit. If either party believes that the use of those Unit Prices would reach in an inequitable result, then that party shall have the burden of showing that a substantial change in the cost of the related supplies, materials, equipment, tradesmen or laborers has materially increased or decreased since the bid.

In the absence of applicability of Unit Prices used in the bid, or agreement of the parties, any adjustment in the Contract Amount for a Change Order shall take into account the reasonable costs and savings related to the change in the Work, including the Contractor's reasonable overhead and profit. The components that the Contractor and the Town agree shall be used to determine the Contractor's cost of the Work are the following:

- A. The Contractor's payroll costs for employees directly employed by it attributable to performance of the work described in the Change Order. Payroll costs shall include payroll taxes, normal and customary fringe benefits and cost of worker's compensation insurance. Payroll costs or other compensation paid to Contractor's administrative or executive officers, home office employees and professionals may not be included.
- B. The cost of the building supplies, materials and equipment incorporated into or consumed in completing the work described in the Change Order and any related transportation and delivery costs, and the allocated rental costs of any equipment rented by the Contractor to perform the work described in the Change Order.
- C. Permit fees, sales or other similar taxes and any increased costs of bond premiums or insurance premiums directly attributable to the work described in the Change Order.
- D. Additional costs of field supervision and field office personnel, but only to the extent attributable to the change in the work described in the Change Order.
- E. Payments made by the Contractor to subcontractors for the work of subcontractors encompassed in the Change Order. In the event the Contractor selected the subcontractor by other than competitive bidding, the Contractor must provide the Engineer with supporting documentation showing that the amount paid to subcontractor was reasonable and consistent with then applicable market conditions for the same or substantially similar work.
- F. Contractor's overhead and profit not to exceed an aggregate of 10 percent on items A through D above.
- G. Contractor's overhead and profit on portions of the Change Order work performed by subcontractors (item F above) for which the aggregate percentage of overhead and profit shall be limited to 5 percent.
- H. All of the provisions hereof relating to Change Orders and Construction Directives are subject and subordinate to the provisions of this Contract regarding No Damages For Delay. No application for Change Order, or Change Order shall include compensation, reimbursement or other amounts excluded in the No Damage For Delay provisions of this Contract.

52. STOP WORK ORDER

The Town may, at any time, by written Stop Work Order, require the Contractor to stop all, or any, designated part of the Work for a period of up to 120 days after delivery of the Stop Work Order to the Contractor (or for such additional period beyond 120 days to which the Town and the Contractor may agree). The Stop Work Order shall specifically reference this paragraph. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs and expenses allocable to the work described in the Stop Work Order during the period of work stoppage. At the expiration of the Stop Work Period (including any extensions to which the Town and the Contractor have agreed), the Town shall: (1) notify the Contractor that the Stop Work Order is terminated at which time the Contractor shall recommence the work that had been suspended; or (2) Terminate this Contract for Convenience pursuant to paragraph 63 hereof; or (3) Terminate this Contract by reason of default pursuant to paragraph 62 hereof.

To the extent the Contractor believes the Stop Work Order results in an increase in the time required for completion of all or any portion of the Work, or an increase or decrease in, the Contractor's costs allocable to the performance of all or any part of the Contract, the Contractor may submit a request for a Change Order. Such request for Change Order must be provided to the Town with reasonable backup documentation no later than ten (10) days from the end of the

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period of work stoppage or the Contractor will have waived its right to seek a Change Order by reason of the Stop Work Order.

No Stand Down for The Season or Action by the Town with regard thereto shall be construed as a Stop Work Order.

53. TERMINATION BY THE OWNER FOR CAUSE

The Town may terminate this Contract in the event:

- a. Contractor fails or refuses to prosecute the Work or any severable part, with the diligence that will insure its completion within the time specified in this Contract;
- b. Contractor fails or refuses to prosecute the Work on any severable part, with the diligence that will insure its completion within the time specified in construction schedules and related milestones issued in conjunction with this Contract;
- c. Contractor fails to complete the Work within the time specified in this Contract;
- d. Contractor fails to deliver the supplies or perform the services required of the Contractor under this Contract within the time specified in this Contract;
- e. Contractor fails or refuses to provide sufficient properly skilled workmen or tradesmen;
- f. Contractor refused or fails to supply materials, equipment or services meeting the requirements of this Contract;
- g. Contractor fails to make payments for materials, labor or services to subcontractors, sub subcontractors, suppliers or material men of any tier in accordance with such agreements that may exist among them;
- h. Contractor violates laws, ordinances, rules, regulations of any governmental authority having jurisdiction;
- i. Contractor materially breaches any of the provisions of this Contract.

When any single or combination of the above causes exist such cause(s) have not been cured after seven (7) days written demand by the Town, the Town may, with full reservation of, and without prejudice to any other right or remedy the Town may have, upon giving Contractor and the surety five (5) days written notice, terminate the Contract. Thereupon the Town shall immediately be entitled to possession of the worksite and all supplies, materials, equipment thereon and to finish the Work by reasonable means the Town shall decide in its discretion. No payments shall be due the Contractor until the Work is fully and finally completed. Contractor and Contractor's surety shall be charged with all costs and expenses of completing the Work (the "Cost to Complete") including without limitation: costs of repairing, replacing or re-mediating improperly performed work; completing portions of the Work left undone on the Contractor's termination; architectural, engineering and other professional fees and costs incurred as a result of Contractor's termination and in connection with completing the Work; liquidated damages at the rate specified herein until Completion is achieved; any other loss, daim or damage incurred by the Town by reason of Contractor's default. If the unpaid portion of the Contractor's Bid (the "Unpaid Bid Amount") is greater than the Cost to Complete, the Cost to Complete shall be subtracted from the Unpaid Bid Amount and the difference shall be paid to Contractor within sixty (60) days from completion of the Work. If the Cost to Complete exceeds the Unpaid Bid Amount, the Unpaid Bid Amount shall be subtracted from the cost to complete and Contractor shall be indebted to and shall pay to the Town that difference. The rights and remedies reserved to the Town in this paragraph are without waiver of and are in addition to any other rights and remedies provided by law or under this Contract to the Town.

54. TERMINATION BY THE CONTRACTOR

In the event the Town has not made a Progress Payment or the Final Payment within the time stated in the Contract Documents, the Contractor may terminate this Contract if the Town fails or refuses to make such payment after ten (10) days written notice to the Engineer and the Town.

55. WAIVER OF CLAIMS FOR CONSEQUENTIAL DAMAGES

The Town and the Contractor each waive daims against the other for consequential damages arising out of or related to, any breach or termination of this Contract. The consequential damage exdusion of this paragraph is in addition to and not in limitation of, any other limitations of damage or termination daims contained in this Contract. Notwithstanding the foregoing, this paragraph shall not operate to preclude the Town from daiming and recovering from the Contractor liquidated damages, if appropriate, under the provisions of this Contract.

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56. BINDING ON SUCCESSORS AND ASSIGNS

This Contract shall inure to and be binding on the heirs, representatives, successors and assigns of the Town and the Contractor, although Contractor may not assign this Contract or any right hereunder (except to the extent of any payments earned for purposes of collateral assignment to lenders) absent the prior written consent of the Town. Contractor acknowledges that the Town has entered into this Agreement with the Contractor after an extensive competitive bidding process and evaluation of Contractor's particular qualifications and skills to perform the Work. Therefore, Contractor agrees that the Town may withhold the consent to assignment referred to in this subsection for any reason the Town deems appropriate in its sole and unfettered discretion.

57. CHAPTER 287 REQUIREMENTS

Contractor agrees that this Contract incorporates the requirements of §287.058, Florida Statutes, for contract documents and that the Town reserves and has the unilateral right to cancel this contract for refusal by Contractor to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with this Contract, unless the records are exempt from s.24(a) of Art. 1 of the State Constitution and §119.07(11), Florida Statutes. Contractor also agrees to comply with § 287.0585, Florida Statutes, with regard to payment of subcontractors and suppliers and acknowledges the statutory sanctions thereon in the event of non-compliance.

58. WAIVER OF JURY TRIAL

The Town and Contractor hereby expressly, knowingly and intentionally waive any right they may have to a jury trial in connection with, or in respect to any litigation or claim based or related to this contract, or with regard to performance of the work, including but without limitation any to which the Engineer shall also be a party.

59. ENTIRE AGREEMENT

This Contract contains the final, complete, and exclusive expression of the understanding between the Town and Contractor with respect to the obligations created under this Contract and this Contract supersedes any prior or contemporaneous stipulations, agreements, understandings or representations, oral or written by either of them.

A waiver or modification of any provision of this Contract is valid only if such waiver or modification is in writing and signed by each party to this Contract. The Town and the Contractor each represent and warrant to the other, that the parties executing this Contract have full power, authority and legal right to execute and deliver, and to perform and observe the provisions of this Contract.