

REQUEST FOR PROPOSALS

Sun 'n Lake of Sebring
Public Works Department
5306 Sun 'n Lake Blvd.
Sebring, FL 33872
e-mail: ggriffin@snldistrict.org
Facsimile Number: 863-382-2988

RFP NO. 14-01

OPENING TIME: **2:00 P.M.**

OPENING DATE: 2/13/14

THIS IS NOT AN ORDER

YOU ARE INVITED TO PROPOSE ON THE FOLLOWING:

Sun 'n Lake of Sebring Improvement District Waterline Interconnection and Unit 4 Pond Construction

SEE ATTACHED PROJECT DOCUMENTS

The complete set of proposal documents is available on the District web site at www.snldistrict.org or call 863-382-2196.

Proposals must be received in the District Office before:

Time: 2:00 P.M. Date: February 13, 2014

State of Florida Tax Exemption Number is
85-8012528797C-8

Signed: Michael Wright, General Manager

Date: January 16th, 2014

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Items in bold are required to be returned with proposal submittal.

LEGAL AD
SUN 'N LAKE OF SEBRING IMPROVEMENT DISTRICT
REQUEST FOR PROPOSALS FOR WATERLINE INTERCONNECTION
AND UNIT 4 POND CONSTRUCTION
RFP No. 14-01

The Sun 'n Lake of Sebring Improvement District hereby requests proposals from interested underground contractors to provide material and installation of waterlines and meters to connect two water line systems and construct a stormwater storage pond as described in the specification and drawings. The District intends to select one supplying firm from the Request for Proposals (RFPs) to provide the requested construction and provide materials described under Specifications of the bid package. The installation will be along the north side of Valnera St. and will include bores under Frontage Road and US. 27 in Sebring, FL. Specifications can be found at www.snldistrict.org. Requested equipment and work shall be installed for the District and ready for service prior to May 1st, 2014.

There will be a **MANDATORY** pre-bid meeting Tuesday, January 28th at 9:00 a.m. at the Sun 'n Lake Improvement District District Office, 5306 Sun'n Lake Blvd, Sebring, FL 33872.

Sealed proposals may be hand delivered or mailed to the District office located at 5306 Sun 'n Lake Blvd., Sebring, FL 33872, Proposal for Waterline Interconnection Construction, RFP No. 14-01, Attention: Greg Griffin, Director of Public Works by 2:00 p.m. on Thursday, February 13th, 2014. Proposers must provide three (3) copies of their proposal. Award will be based on Best Value.

The District reserves the right to accept or reject any or all proposals and to re-advertise for proposals when deemed in the best interest of the District.

End of Advertisement

Advertise 1/19/14 and 1/26/14

Sun'n Lake of Sebring Improvement District

RFP # 14-01 Waterline Interconnection and Unit 4 Pond Construction

Project Bid Key Dates

Advertise	1/19/14 & 1/26/14
Mandatory Pre-Bid Meeting	9:00 AM 1/28/14 - Sun'n Lake Improvement District Office
Deadline for Questions	4:00 PM 2/6/14
Bids Due	2:00 PM 2/13/14 - Sun'n Lake Improvement District Office
Substantial Completion Date	4/17/14
Final Completion Date	5/1/14

GENERAL CONDITIONS

PROPOSAL: To insure acceptance of the proposal, follow these instructions.

SEALED PROPOSALS: All Proposals must be submitted in a sealed package. The submitted proposal will contain one (1) original and two (2) marked copies. The face of the package will contain the date and time of the proposal opening and the proposal number. Proposals not submitted on the District's forms may be rejected. All proposals are subject to the conditions specified herein and on any attached sheets, specifications, special conditions or vendor notes. Any changes to the proposal document must be in ink and must be initialed.

PROPOSAL OPENING: Shall be on the date and at the time specified in the proposal documents. It is the proposer's responsibility to assure that their proposal is delivered at the proper time and place of the proposal opening. Proposals which for any reason are not so delivered shall be returned to the proposer unopened. Offers by telephone or facsimile cannot be accepted.

CONFLICT OF INTEREST: The award hereunder is subject to Chapter 112, Florida Statutes. All proposers must disclose with their proposal the name of any officer, director or agent who is also an employee of the District. Further, all proposers must disclose the name of any District employee who owns, directly or indirectly, any interest of ten percent (10%) or more of the proposer's firm or any of its branches. Gifts from proposers to Employee's or Employee's Families is strictly prohibited per Florida Statutes 112.313 and 112.3148.

AWARDS: As the best interest of the District may require, the right is reserved to make award(s) by individual items, group of items, all or none, or a combination thereof, with one or more suppliers and to reject any proposals or waive any informality or technicality in proposals received. The District intends to select a proposal from the highest qualifying responsible bidder from this bid. Vendors who are awarded contracts are asked to extend the same pricing and conditions to other entities who may want to "piggy-back" on a District Bid or Request for Proposal.

DISPUTES: In case of any doubt or difference of opinion as to the items to be furnished hereunder, the decision of the District General Manager shall be final and binding on both parties.

LEGAL REQUIREMENTS: Federal, State, County and local laws, ordinances, rules and regulations that in any manner effect the item(s) covered herein apply. Lack of knowledge by the proposer will in no way be cause for relief from responsibility.

LIABILITY: The vendor shall hold and save the District, its officers, agents and employees harmless from liability of any kind in the performance of or fulfilling the requirement of the Purchase Orders, which may result from this proposal.

CANCELLATION: This agreement may be terminated in whole or in part in writing by either party with thirty (30) days notice in the event of substantial failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party.

NOTE: ANY AND ALL SPECIAL CONDITIONS ATTACHED HERETO WHICH VARY FROM THESE GENERAL CONDITIONS SHALL HAVE PRECEDENCE.

PUBLIC ENTITY CRIME INFORMATION STATEMENT

All invitations to bid as defined by Section 287.012(11), Florida Statutes, requests for proposals as defined by Section 287.012(16), Florida Statutes, and any contract document described by Section 287.058, Florida Statutes, shall contain a statement informing persons of the provisions of paragraph (2)(a) of Section 287.133, Florida Statutes, which reads as follows:

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

All vendors who submit a Bid or Request for Proposal to Sun 'n Lake of Sebring, are guaranteeing that they have read the previous statement, and by signing the bid documents, are qualified to submit a bid under Section 287.133, (2)(a) Florida Statutes.

GENERAL SPECIFICATIONS

1. DESCRIPTION OF SERVICE

The Sun 'n Lake of Sebring Improvement District (hereafter "the District") is seeking proposals from interested firms to provide services to provide materials and construction of a waterline to connect two existing water systems as outlined on the project plans. Materials and Installation to include a flow meter, 12" pipe, directional bores, and a steel cased jack and bore. Earthwork to include excavation of a stormwater storage pond, culvert installation, landscaping and fencing. The District intends to select one supplying firm from the Request for Proposals (RFPs) to deliver and contract services described herein under Scope of Services and project drawings.

2. EFFECTIVENESS AND DURATION

The agreement(s) resulting from this solicitation is for the items and materials described in this proposal document.

3. REFERENCES

Proposers will complete and return, with the Proposal, a list of at least three (3) client/customer references including company name, address, contact person, telephone number and date you provided the equipment/services to the client. The List of References form provided in these documents should be used. If the Proposer already has a preprinted list of references, then indicate on the District's List of References form "See Attached List." Attach the preprinted list to the District's form and submit both with the Proposal.

4. REQUIRED DOCUMENTS

The following documents included in this Request for Proposal package are required to be submitted along with the Information Requested for this proposal:

- a. Proposal Form
- b. List of References Form
- c. Statement of Insurance Compliance Form
- d. Non-Collusion Affidavit of Proposer
- e. Conflict of Interest Statement
- f. Disputes Disclosure Form
- g. Drug Free Workplace Certification Form
- h. Unauthorized Alien Workforce

5. EFFECTIVE PERIOD OF PROPOSALS

All proposals must state the period for which the proposal shall remain in effect. Such period shall not be less than 120 days from the proposal date.

6. RIGHT OF REJECTION BY THE DISTRICT

Notwithstanding other provisions of this RFP, the District reserves the right to award this contract to the supplying firm that best meets the requirements of the RFP, and not necessarily, to the lowest bidder. Further, the District reserves the right to reject any or all proposals prior to execution of the contract, with no penalty to the District.

7. CONTRACT NEGOTIATIONS

After review of the proposals, the District intends to enter into contract negotiations with the selected supplying firm. These negotiations could include all aspects of equipment, service, and fees. If a contract is not finalized in a reasonable period of time, the District will open negotiations with the next ranked firm.

8. AWARD OF CONTRACT

The proposer to whom a contract is awarded shall be required to enter into a written contract agreement with the District in a form approved by legal counsel for the District. This RFP and the proposal, or any part thereof, may be incorporated into and made a part of the final contract. The District reserves the right to negotiate the terms and conditions of the contract with the selected proposer.

10. CONTRACT TERM

It is the intent to award a contract for the duration of the project

11. QUESTIONS

All questions concerning this RFP shall be submitted in writing/email to the name and address below before February 6th at 4:30 p.m. All responses to questions will be addressed in the form of an addendum issued after the question deadline to be posted with the RFP on the District web site www.snldistrict.org.

Greg Griffin, Director of Public Works
Sun 'n Lake of Sebring Improvement District
5306 Sun 'n Lake Blvd.
Sebring, FL 33872
Fax number: 863-382-2988 / E-mail: ggriffin@snldistrict.org

Contact made with any other employee of, and/or elected officials of the District regarding this RFP will be grounds for the rejection of the contacting individual/firm submittal.
Notice: Any communication with district staff is public record and subject to release.

12. SUBMITTAL OF PROPOSAL

All firms submitting a proposal will need to submit one marked original and four (4) sets of their documents in a sealed package. The left front of the package shall read:

Request for Proposal for Waterline Interconnection and Unit 4 Pond Construction
RFP # 14-01
Due Date: February 13th, 2014 – Time: 2:00 p.m.
Company Name and Address

Documents will need to be mailed or hand delivered to:

Greg Griffin, Director of Public Works
Sun 'n Lake of Sebring Improvement District
5306 Sun 'n Lake Blvd.
Sebring, FL 33872

All documents will need to be delivered to, or received in the mail by the due date and time. Any document submitted or received after this date and time shall not be considered and will be returned to the sender unopened. The District takes no responsibility for late mail or late delivery service.

13. PERFORMANCE BOND AND PAYMENT BOND

A performance bond and a labor and materials payment bond will be required for this project unless bid total does not exceed \$99,999.99

SCOPE OF SERVICES

The Sun 'n Lake of Sebring Improvement District (hereafter "the District") is seeking proposals from interested firms to provide services to provide materials and construction of a waterline to connect two existing water systems as outlined on the project plans. Materials and Installation to include a flow meter, 12" PVC pipe, directional bores, and a steel cased jack and bore. Earthwork to include excavation of a stormwater storage pond, culvert installation, landscaping and fencing. The District intends to select one supplying firm from the Request for Proposals (RFPs) to deliver and contract services described in the following:

Installation, testing, and final approval of the requested facilities shall be complete prior to May 1, 2014 unless otherwise instructed and agreed upon by both parties.

Pertinent specifications related to the design requirements of all items are included in this document.

A mandatory pre-bid meeting followed by a site visit is required for all firms interested in providing proposals and will be held January 28, 2014 at 9:00am at the Sun 'n Lake Community Center, 5300 Edgewater Drive, Sebring, FL 33872.

LOCATIONS AND DESCRIPTION OF WORK

Sun 'n Lake of Sebring Improvement District,
Valnera Street and US HWY 27, Avon Park FL 33825

Services Minimum Requirements

The following items are minimum requirements and must be considered when submitting proposals for the requested services. Failure to address any of these requirements without sufficient explanation may be grounds for proposal rejection:

General requirements:

Bids to be inclusive of all materials, services, and support needed to install the waterline shown on the plans, including all taps, valves, meter, and bores under existing roadways. Waterlines are to be installed and tested in accordance with all local and state rules and regulations. All work will comply fully with permits issued from the Florida Department of Environmental Protection and Florida Department of Transportation. All waterline piping and components shall conform to AWWA standards. All materials used shall be approved by the project engineer prior to construction.

Bids are intended to be a "turn-key project" price. Contractor to photo and video document site conditions prior to start of construction.

END SCOPE OF SERVICES SECTION

EVALUATION CRITERIA

One selection will be made from the equipment supplier proposer/bidder who is deemed to be the best suited among those submitting proposals on the basis of the previous Scope of Materials and the evaluation factors listed below. Proposer/Bidder shall be descriptive in their proposal on each of, but not limited to, the areas listed below.

Once the District has reviewed the submitted proposals, the District selection committee will use the criteria listed below to evaluate each proposal separately. These criteria are in no particular order.

1. Value.
2. Perceived structural integrity.
3. References.
4. Relevant experience providing similar systems with commercial and public sector clients.
5. Warranty, warranty period and warranted materials.
6. Quality and conciseness of proposals.
7. Overall ability of equipment to meet the needs of the District.

END OF EVALUATION CRITERIA

**SUN 'N LAKE OF SEBRING
IMPROVEMENT DISTRICT
WATERLINE INTERCONNECTION
CONSTRUCTION
PROPOSAL FORM
RFP NO. 14-01**

To: Sun 'n Lake of Sebring Improvement District
5306 Sun 'n Lake Blvd.
Sebring, FL 33872

The undersigned hereby declares that after carefully examining these proposal documents, they are fully aware of all conditions affecting such work/items, for which proposals were advertised to be returned by February 13th, 2014 and does hereby submit the following proposal for completion of said work/items. All changes must be initialed in ink.

FOR THIS PROPOSAL TO BE CONSIDERED VALID IT IS MANDATORY THAT THE PROPOSAL BE SIGNED IN THE SPACE PROVIDED

The Proposer:

A. Acknowledges receipt of:

- 1) Proposal Specifications
- 2) Addenda:

No. _____ Dated _____

No. _____ Dated _____

B. Has examined the Proposal Documents and understands that in submitting his Bid, he waives all right to plead any misunderstanding regarding the same.

As requested in the General Conditions, attached are two marked duplicate copies of the original Proposal Form and ALL attachments. ___ Yes ___ No (check one)

Attached, as required in the General Specifications section, is the List of References. ___ Yes ___ No (check one)

The District reserves the right to accept any or all proposals, to waive informalities, and to reject all or any part of any proposal as they may deem to be in the best interest of the District.

This Proposal Form is a mandatory form to ease tabulation and analysis; however, it can be accompanied by additional support forms. An officer or representative who has official authorization to sign proposals **MUST** sign this Proposal Form. Failure to sign in the space provided below will result in the Proposal being rejected.

Company Name	_____
FEIN or SS#	_____
Name of Owner/Partner/Officer	_____
Title/Position of Owner/Partner/Officer	_____
Signature of Owner/Partner/Officer	_____
Business Telephone	_____
Fax Telephone	_____
Business Address	_____
City/State/Zip	_____

****THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR PROPOSAL**

SCHEDULE OF PROPOSAL ITEMS

SUN 'N LAKE OF SEBRING, FLORIDA

SUN 'N LAKE OF SEBRING IMPROVEMENT DISTRICT

Waterline Interconnection Construction

RFP #14-01

Item No.	Item Description	Total
1	12" C-900 DR-18 PVC Waterline- Approx 281' installed per plans. Includes taps, valves, restraints, and fittings.	\$
2	133' OF 24" STEEL JACK AND BORE - Install 24" jack and bore under US Hwy 27. Includes materials, traffic control, dewatering, and restoration. Also includes 133' of 12" C-900 PVC, caps and spacers installed in casing. Per Plans	\$
3	70' Directional Bore (Frontage Road) - 12" SDR-11 HDPE Waterline Pipe	\$
4	30' Directional Bore Valnera Street) - 12" SDR-11 HDPE Waterline Pipe	\$
5	12" Meter - McCrometer Ultra Mag model UM06. Include meter box and control panel assembly and installation.	\$
6	Right of Way Restoration - Sod all disturbed areas within right-of-way.	\$
	Waterline Subtotal	\$

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SCHEDULE OF PROPOSAL ITEMS

SUN 'N LAKE OF SEBRING, FLORIDA

SUN 'N LAKE OF SEBRING IMPROVEMENT DISTRICT

Unit 4 Stormwater Pond Earthwork

RFP #14-01

Item No.	Item Description	Total
1	POND EXCAVATION- Earthwork and material excavation of approx 800 c.y. material.	\$
2	SITE GRADING - Final site grading per plans	\$
3	DRAINAGE STRUCTURES - 1 type E ditch inlet and 4 mitered ends	\$
4	STORMWATER PIPING - 104' of 30" RCP	\$
5	STORMWATER PIPING - 15' of 15" HDPE PIPE	\$
6	6' CHAINLINK FENCE - ' of 6' chainlink galvanized fence. Including 2-8' gates and 2-10' gates	\$
7	Right of Way Restoration - Sod all disturbed areas within right-of-way.	\$
8	Landscape/Irrigation - 400' of hedge along perimeter	\$
9	Clearing and Grubbing - Removal of all vegetative debris and excess material from the site.	\$
	Earthwork Subtotal	\$

** THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR PROPOSAL.

SCHEDULE OF PROPOSAL ITEMS

SUN 'N LAKE OF SEBRING, FLORIDA

SUN 'N LAKE OF SEBRING IMPROVEMENT DISTRICT

Bid Total

RFP #14-01

Item No.	Item Description	Total
1	Waterline Subtotal.	\$
2	Earthwork Subtotal	\$
Project Total		\$

** THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR PROPOSAL.

STANDARD INSURANCE REQUIREMENTS
WATERLINE INTERCONNECTION AND UNIT 4 POND CONSTRUCTION
RFP NO. 14-01

The selected Firm or Individual for all Bids, Requests for Qualifications (RFQ), and Requests for Proposals (RFP) will be required to name the District as an additional named insured with the following minimum coverage.

A. Workers' Compensation shall be maintained by the selected firm or individual for all employees engaged in the work under this Bid, RFQ or RFP in accordance with the laws of the State of Florida. Employers' Liability Insurance shall be maintained by the selected firm or individual at limits not less than the following.

\$100,000 Each Accident
\$100,000 Disease Each Employee
\$500,000 Disease Aggregate

B. Comprehensive General Liability Insurance shall be maintained by the selected firm or individual with limits not less than the following:

\$1,000,000 Bodily Injury & Property Damage-each occurrence
\$1,000,000 Personal & Advertising Injury-each occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregates limit
\$5,000 Medical Payments
\$100,000 Fire Damage Legal Liability

Coverage shall include Contractual Liability and Independent Contractors Liability.

C. Automobile Liability Insurance shall be maintained by the selected firm or individual with a combined single limit of not less than \$1,000,000 Bodily Injury and Property Damage in accordance with the laws of the State of Florida, as to the Ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles.

D. Professional Liability Insurance shall be maintained by the selected firm or individual with a combined single limit of not less than \$1,000,000, protecting the selected firm against claims of the District for negligence, errors, mistakes, or omissions in the performance of services to be performed and furnished by the selected firm or individual.

E. Other Required Insurance Coverage where unusual operations are necessary to complete the work, such as Longshoremen and Harbor Workers' Exposures, use of aircraft or watercraft, use of explosives, and any high risk circumstances. No aircraft, watercraft or explosives shall be used without the express advance written approval of the District.

All insurance minimum coverage extend to any subcontractor, and the General Contractor is responsible for all sub-contractors.

_____ (Initial indicating you agree to provide proof of coverage meeting the above requirements if selected)

****THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR PROPOSAL**

STATEMENT OF INSURANCE COMPLIANCE FORM
WATERLINE INTERCONNECTION AND UNIT 4 POND CONSTRUCTION
RFP NO. 14-01

The undersigned firm agrees to obtain prior to award, if selected, Professional Liability Insurance, Workers' Compensation and General Liability in accordance to the requirements as set forth in the Invitation for Proposal, Invitation to Bid, or Invitation for Qualifications, or draft agreement, attached hereto.

Policies other than State Issued Workers' Compensation shall be issued only by companies authorized by maintaining certificates of authority issued to the companies by the Department of Insurance of the State of Florida to conduct business in the State of Florida and which maintain a Rating of "A" or better and a Financial Size category of "VII" or better according to the A.M. Best Company. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.57, Florida Statutes.

COMPANY NAME

AUTHORIZED OFFICER SIGNATURE

OFFICER NAME

OFFICER TITLE

DATE

****THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR PROPOSAL.**

CONFLICT OF INTEREST STATEMENT

STATE OF FLORIDA

Before me, the undersigned authority, personally appeared _____, who was duly sworn, deposes, and states:

1. I am the _____ of _____ with a local office in _____ and principal office in _____.

City and State
City and State
2. The above named entity is submitting a Proposal for the Sun 'n Lake of Sebring Improvement District **RFP #14-01** described as: **WATERLINE INTERCONNECTION and UNIT 4 POND CONSTRUCTION.**
3. The Affiant has made diligent inquiry and provides the information contained in this Affidavit based upon his own knowledge.
4. The Affiant states that only one submittal for the above proposal is being submitted and that the above named entity has no financial interest in other entities submitting proposals for the same project.
5. Neither the Affiant nor the above named entity has directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraints of free competitive pricing in connection with the entity's submittal for the above proposal. This statement restricts the discussion of pricing data until the completion of negotiations, if necessary, and execution of the Contract for this project.
6. Neither the entity nor its affiliates, nor any one associated with them, is presently suspended or otherwise ineligible from participation in contract letting by any local, State, or Federal Agency.
7. Neither the entity, nor its affiliates, nor any one associated with them have any potential conflict of interest due to any other clients, contracts, or property interests for this project.
8. I certify that no member of the entity's ownership or management is presently applying for an employee position or actively seeking an elected position with the Sun 'n Lake of Sebring Improvement District.
9. I certify that no member of the entity's ownership or management, or staff has a vested interest in any aspect of the District.
10. In the event that a conflict of interest is identified in the provision of services, I, on behalf of the above named entity, will immediately notify the District.

Dated this ____ day of _____, 2014

Signature _____

Typed Name and Title

Sworn to and subscribed before me this ____ day of _____, 2014

Personally Known _____ Or produced identification _____. Identification Type: _____

Notary Public-State of _____
Printed, typed, or stamped commissioned name of notary public

My commission expires _____

****THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR PROPOSAL.**

DISPUTES DISCLOSURE FORM
WATERLINE INTERCONNECTION AND UNIT 4 POND CONSTRUCTION
RFP NO. 14-01

Answer the following questions by placing an “X” after “YES” or “NO”. If you answer “YES”, please explain in the space provided, or via attachment.

Has your firm or any of its officers, received a reprimand of any nature or been suspended by the Department of Professional Regulations or any other regulatory agency or professional association within the last five (5) years?

YES _____ NO _____

Has your firm, or any member of your firm, been declared in default, terminated or removed from a contract or job related to the services your firm provides in the regular course of business within the last five (5) years?

YES _____ NO _____

Has your firm had against it or filed any requests for equitable adjustment, contract claims, bid protests, or litigation in the past five (5) years that is related to the services your firm provides in the regular course of business?

YES _____ NO _____

If yes, state the nature of the request for equitable adjustment, contract claim, litigation, or protest, and state a brief description of the case, the outcome or status of the suit and the monetary amounts or extended contract time involved.

I hereby certify that all statements made are true and agree and understand that any misstatement or misrepresentation or falsification of facts shall be cause for forfeiture of rights for further consideration of this proposal for the Sun 'n Lake of Sebring Improvement District, RFP #12-08 Self Cleaning Wastewater Screen.

Firm

Date

Authorized Signature and Title

Printed or Typed Name and Title

****THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR PROPOSAL.**

DRUG-FREE WORKPLACE CERTIFICATION FORM
WATERLINE INTERCONNECTION AND UNIT 4 POND CONSTRUCTION
RFP NO. 14-01

IDENTICAL TIE BIDS-In accordance with Florida State Statutes Section 287.087, preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids, which are equal with respect to price, quality, and service, are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

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, and 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 under a bid a copy of the statement specified in subsection 1 above.
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, or plea of guilty or nolo contendere to, any violation of Chapter 893 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 to whom is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this entire section.

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

Authorized Signature and Title

Date

Printed Name and Title

**** THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR PROPOSAL.**

UNAUTHORIZED ALIEN WORKERS
WATERLINE INTERCONNECTION AND UNIT 4 POND CONSTRUCTION
RFP NO. 14-01

1. The Sun 'n Lake of Sebring Improvement District will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA"). The District shall consider the employment by a contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(3) of the INA shall be grounds for unilateral cancellation of this Agreement by the District.

The Contractor agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this proposal as outlined in Sample Contract.

2. Employers may avail themselves of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers, E-Verify provides an automated link to Federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.
3. If your company wishes to avail themselves of this program, you can register online for E-Verify at <https://e-verify.uscis.gov/enroll>, which provides instructions for completing the registration process. At the end of the registration process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you as the employer, the SSA, and DHS. An employee who has signatory authority for the employer can sign the MOU. Employers can use their discretion in identifying the best method by which to sign up their locations for E-Verify. To find out more about E-Verify, please visit www.dhs.gov/e-verify or contact USCIS at 1-888-464-4218. Z:/AAA Active Clients/SNL/UNAUTHORIZED ALIENS-E-Verify.doc.

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

Authorized Signature and Title

Date

Printed Name and Title

**** THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR PROPOSAL.**

PERFORMANCE BOND FORM
WATERLINE INTERCONNECTION AND UNIT 4 POND CONSTRUCTION
RFP NO. 14-01

THIS INSTRUMENT WITNESSETH: That we (1) _____ a
(2) _____ organized under the laws of the State of _____ and regularly authorized to do
business in the State of Florida as Principal, and we (3) _____ a (2)
_____ organized under the laws of the State of _____ and regularly
authorized to do business in the State of Florida as Surety, are held and firmly bound unto the Sun 'n Lake of
Sebring Improvement District, Florida, hereinafter called the Owner in accordance with a Contract hereinafter
referred to, in the penal sum of (4) _____ Dollars (\$) _____
lawful money of the United States, well and truly to be paid unto the said Owner, for the payment of which we
bind ourselves, our heirs, executors, administrators, successors and assignees, jointly and severally, firmly by
these presents;

WHEREAS, the said Principal has entered into a written contract with the Owner dated _____
for the work designated as RFP #14-01 Waterline Interconnection and Unit 4 Pond Construction, located in
Sebring, Florida in conformity with Contract Documents hereby referred to and made a part hereof, the same to all
intents and purposes as if written at length herein, in which Contract the said Principal has contracted to perform
the work specified in said Contract in accordance with the terms thereof;

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall faithfully perform the
Contract on his (its) part, and satisfy all covenants, terms, conditions and agreements incurred by the Principal in the
performance of said Contract, during the original term thereof, and any extensions thereof which may be granted by
the Owner, with or without notice to the Surety, and shall satisfy all claims and demands arising thereunder, and shall
fully indemnify and save harmless the Owner from all cost and damage which the Owner might suffer by reason of
the failure of the Principal to do so, and shall fully reimburse and repay to the Owner all costs, damages, and
expenses which the Owner may incur in making good any default by the Principal, including any default based upon
failure of the Principal, to fulfill his obligation to furnish maintenance, repairs, or replacements for any period of
time after the work is completed, if provided for in said Contract, then this obligation shall be null and void,
otherwise it shall remain in full force and effect.

IN ADDITION, the Principal and Surety, jointly and severally, expressly guarantee that all materials furnished and
workmanship performed under the Contract and in the construction of the work shall fulfill all requirements of the
Contract and the Contract Documents with respect to them. This bond shall remain in effect for a period of two
years from the date of final acceptance.

IT IS HEREBY STIPULATED AND AGREED that any suit based upon any default of the Principal in fulfilling
his obligations to furnish maintenance, repairs, or replacements for any period of time after the Work is completed, if
provided for in the Contract, may be brought at any time up to six months after the expiration of the time specified in
the Contract during which the Contractor has agreed to furnish such maintenance or make such repairs or
replacements.

- (1) Contractor
- (2) Sole Proprietor, Partnership, or Corporation
- (3) Surety
- (4) 100 percent of the Contract

THE SAID SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Contract Documents accompanying the same shall in any way affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Contract Documents.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in several counterparts, each one of which shall be deemed an original, this the ____ day of _____, 2014.

(SEAL) (1)

By: _____

Title: _____

(SEAL) (2)

By: _____

Title: _____

(Attorney in Fact)

(1) Contractor

(2) Surety

LABOR AND MATERIALS PAYMENT BOND FORM
WATERLINE INTERCONNECTION AND UNIT 4 POND CONSTRUCTION
RFP NO. 14-01

THIS INSTRUMENT WITNESSETH: That we (1) _____ a (2) _____ organized under the laws of the State of _____ and regularly authorized to do business in the State of Florida as Principal, and we (3) _____ a (2) _____ organized under the laws of the State of _____ and regularly authorized to do business in the State of Florida as Surety, are held and firmly bound unto Sun 'n Lake of Sebring, Florida, hereinafter called the Owner in accordance with a Contract hereinafter referred to, in the penal sum of (4) _____ Dollars (\$ _____) lawful money of the United States, well and truly to be paid unto the said Owner, for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assignees, jointly and severally, firmly by these presents;

WHEREAS, the said principal has entered into a written contract with the Owner dated _____ for work designated as RFP #14-01 project located in Sebring, Florida conformity with Contract Documents hereby referred to and made a part hereof, the same to all intents and purposes as if written at length herein, in which Contract the said Principal has contracted to perform the work specified in said Contract in accordance with the terms thereof;

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall faithfully satisfy all claims and demands incurred by the Principal of said Contract, and shall pay all obligations arising thereunder, and shall fully indemnify and save harmless the Owner from all cost and damage which the Owner might suffer by reason of the failure of the Principal to do so, and shall fully reimburse and repay to the Owner all costs, damages, and expenses which the Owner may incur in making good any default by the Principal, and shall promptly make payment of prevailing wages to all persons supplying labor, equipment or materials for use in the prosecution of the work, whether by subcontractor or otherwise, and including all insurance premiums on said work as provided for in such Contract, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

IN ADDITION, the Principal and Surety, jointly and severally, expressly guarantee that the Owner will be held harmless from any liens, claims, demands or obligations in conjunction with materials or services provided with respect to this Contract. This bond shall remain in effect for a period of one year from the date of final acceptance. The Owner may sue on this Bond, and any person furnishing material or performing labor, either as an individual or as a Subcontractor, shall have the right to sue on this Bond in the name of the Owner for his use and benefit. The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Contract Documents accompanying the same shall in any way affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Contract Documents.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

- (1) Contractor
- (2) Sole Proprietor, Partnership, or Corporation
- (3) Surety
- (4) 100 percent of the Contract

IN WITNESS WHEREOF, this instrument is executed in several counterparts, each one of which shall be deemed an original, this the _____ day of _____, 2014.

(SEAL) (1)

By _____

Title: _____

(SEAL) (2)

By _____

Title: _____

(Attorney in Fact)

- (1) Contractor
- (2) Surety

PROJECT SPECIFICATIONS
WATERLINE INTERCONNECTION AND UNIT 4 POND CONSTRUCTION

SUN AND LAKE ESTATES OF SEBRING IMPROVEMENT DISTRICT
SEBRING, FLORIDA

PART 1 - GENERAL

A. SUMMARY

1. The CONTRACTOR shall furnish all labor and materials to perform the requested work as shown on the Drawings and described in the Specifications. Work to be constructed under Lump Sum contract with unit prices provided in the bid form for additions and deletions to the CONTRACT. CONTRACTOR shall be responsible for verification of all quantities.
2. All work shall conform to these specifications and to specifications required by the Florida Department of Transportation Utility Construction Permit and the Florida Department of Environmental Protection Water Main Construction Permit. All work shall also conform to specifications and requirements for City of Avon Park Utility Department.
3. All work within roadway shall conform to the 2013 edition of the FDOT Standard Specifications for Road and Bridge Construction.
4. A Maintenance of Traffic (MOT) plan shall be provided to the Engineer and approved by DOT.
5. The Contractor will be responsible for locating all existing utilities affected by their work. Utilities shown on the plans are approximate and shall be verified prior to construction.

B. NOTIFICATIONS

1. Advance notice shall be given to Owner or Owner's representative prior to start of any work.
2. Prior Notification of any work within the FDOT right of way shall be given at least 3 business days prior to commencement. Notification shall be to the FDOT Sebring permitting office unless otherwise instructed.

PART 2 - STANDARDS AND REGULATIONS

A. STANDARDS

1. Industry Standards: Applicable standards of construction industry have same force and effect on performance of the work as if copied directly into Contract Documents or bound and published therewith. Standards referenced in Contract Documents or in governing regulations have precedence over non-referenced standards, insofar as different standards may contain overlapping or conflicting requirements. Comply with standards in effect as of date of Contract Documents, unless otherwise indicated.

2. Trade Union Jurisdiction (if possible): Maintain current information on jurisdictional matters, regulations, actions and pending actions; and administer/supervise performance of work in a manner which will minimize possibility of disputes, conflicts, delays, claims or losses.

B. PRODUCTS, MATERIALS AND EQUIPMENT

1. General Limitations: Where possible, provide entire required quantity of each generic product, material or equipment from a single source; and, where not possible to do so, match separate procurements as closely as possible. To extent selection process is under CONTRACTOR's control, provide compatible products, materials and equipment. Where available and complying with requirements, provide similar applications, and which are recommended by the manufacturers for the application indicated.
2. Product Selections: comply with following for selection of products, materials and equipment:
 - a) Single Product Named: Provide only that product, unless determined to be unavailable, non-compatible with the work, or non-complying with requirements or governing regulations.
 - b) "Or Equal" Clause: Provide named product which complies with requirements, or comply with requirements for gaining approval on "substitution" to select and use an unnamed product.
3. Installation, General: Comply with manufacturer's instructions and recommendations. Anchor securely in place, accurately located and aligned with other work. Clean and protect to ensure that products, materials and equipment will be free from damage and deterioration at time of acceptance.

C. SUBSTITUTIONS

1. Conditions: Refer to Supplementary Conditions. Requests by Contractor will be considered when reasonable, timely, fully documented and qualifying under one or more of following circumstances:
 - a) Related to an "or equal" or similar provision in Contract Documents.
 - b) Required product cannot be supplied in time for compliance with Contract Times requirements.
 - c) Required product is not acceptable to governing authority, or determined to be non-compatible, or cannot be properly coordinated, warranted or insured, or has other recognized disability as certified by CONTRACTOR.
 - d) Substantial advantage is offered OWNER after deducting offsetting disadvantages including delays, additional compensation to ENGINEER for redesign, investigation, evaluation and other necessary services, and similar considerations.

2. Submittals: Include full documentation, including product data, samples where appropriate, detailed performance comparisons and evaluation, testing laboratory reports where applicable, coordination information for effect on other work and time schedule, cost information for proposed change order, CONTRACTOR's general certification of recommended substitution and similar information germane to circumstance.
3. Change Order: Approval of substitutions is possible only by change order procedure.

D. ALTERNATIVES

1. Listing, Acceptance, Requirements: Refer to the individual work sections of specifications and other contract documents for requirements of work to be performed as "Alternatives". Refer to CONTRACT for indication of which Alternatives (as listed in Instructions to Bidders) have been accepted or will be considered for acceptance during construction. Accepted alternatives are in full force and effect, as though included originally in base bid. Each must be completely integrated and coordinated with surrounding work.

PART 3 - SPECIFIED EQUIPMENT

A. MATERIALS

1. Water line pipe materials : C-900 AWWA DR-18
2. Directional Bore Pipe : SDR 11 High Density Polyethylene (HDPE)
3. Jack and Bore Pipe: Steel ASTM A139 Grade B API 2B and comply with FDOT Standards Section 556
4. Meter - McROMETER ULTRA MAG - MODEL UM06 12" dia. Meter shall read flows in both directions and record flows separately for each direction with +/-0.5% accuracy for flows from 0.2 fps to 32 fps. Must be NSF approved, epoxy lined. Control panel to be mounted in a stainless steel panel box mounted on a concrete post. Installation to include electrical connections and control wiring. Owner to provide power connection point.
 - a) METER shall be a velocity sensing electromagnetic type flanged tube meter with sealed housing for 150 PSI working pressure (UM06). The meter shall be a 12 inch Ultra Mag™ MODEL UM06 with a digital indicator having a range of 0 to 6500 gpm and shall be equipped with a 9 digit digital totalizer reading in units of gallons and shall be accurate within 0.5% of actual flow. The meter assembly shall operate within a range of 0.2 FPS to 32 FPS and be constructed as follows:
 - b) METER TUBE (SENSOR) shall be fabricated stainless steel pipe and use 150 lb. AWWA Class "D" flat face steel flanges (UM06). The internal and external of the meter tube shall be blasted and lined with a NSF approved fusion bonded epoxy UltraLiner™, applied by the fluidized bed method. Meter tubes shall have a constant nominal inside diameter offering no obstruction to the flow. Electrodes shall be 316 stainless steel.

- c) MAG SHIELD shall be welded to the tube providing a completely sealed environment for all coils, electrode connections and wiring harness capable of NEMA 6P/IP68 operation.
- d) SIGNAL CONVERTER shall be pulsed DC coil excitation type with auto zeroing. The converter shall indicate direction of flow and provide a flow rate indication and a totalization of flow volume for both forward and reverse directions. Both forward and reverse totalizers shall be electronically resettable. The flow meter converter shall be microprocessor based with a keypad for instrument set up and LCD displays for totalized flow, flow rate engineering units and velocity. The converter shall power the flow sensing element and provide galvanically isolated dual 4-20mA outputs. It shall be possible, in the test mode, to easily set the converter outputs to any desired value within the range. The 4-20mA scaling, time constants, pipe size, flow proportional output, engineering units and test mode values shall be easily set via the keypad and display. Four separate fully programmable alarm outputs shall be provided to indicate empty pipe, forward/reverse polarity (normally open/close), analog over-range, fault conditions, high/low flow rates, percent of range and pulse cutoff. The converter shall periodically perform self-diagnostics and display and resulting error messages. All set up and data and totalizer values may be protected by a password. The converter shall be integrally mounted or remotely mounted up to 200 feet from the sensor, and shall be supplied in a sealed IP67 rated enclosure. Calibration will be completed at the manufacturer's location in accordance with customer supplied application-based requirements.
- e) GROUNDING RINGS shall be 316 stainless steel and shall be supplied with the meter tube. Exception: On sensor models which use grounding electrodes, grounding rings are optional.
- f) SERVICE & SUPPORT: Supplier must have flow calibration laboratories and personnel to perform testing and certify calibration. Personnel must also provide instruction or training as required assuring meters are supported and maintained throughout the guarantee period.
- g) VOLUMETRIC TESTING of all meters must be performed and approved prior to shipment. The complete meter assembly and signal converter must be wet accuracy tested and calibrated. The test facility must be rigorously traceable to an accuracy of $\pm 0.15\%$ with the National Institute of Standards and Technology. If desired, the test shall be witnessed by the customer or their selected agent. A copy of the certified accuracy test record must be furnished at no charge to the customer. The meters shall be manufactured and tested in the U.S.A.
- h) Installation to be inside a concrete vault with aluminum access hatch lid. Shop drawings shall be approved prior to installation.

- i) For local vendor of product, contact Avanti Company, Brandi Albury or Mark Whalen, 22 South Lake Ave, Avon Park, Fl 33825; phone 800-284-5231
 - j) provide a battery backup/surge protector for the power supply within the panel box to prevent data loss during power outage
 - k) Panel box shall be a NEMA 4X Panel Box. Box shall be stainless steel or aluminum, hinged door, weather proof, and include options to secure with a lock. Box to be mounted on a concrete post above ground. All wiring to be contained within conduit outside of the box. Panel box for control head shall also include a 120v duplex receptacle . Size should also allow for placement of the battery backup within the box.
5. Pipe Fittings: All valves and fittings to be epoxy coated and meet all ANSI/AWWA/NSF standards for public supply water systems. Use stainless steel fasteners for joints. Recommended Mueller A-2341-76 Resilient Wedge Gate Valve or equal.
 6. Pipe Restraints: Mechanical joint restraints shall be EBAA MegaLug and shall match appropriate pipe type.

B. TESTING

1. The contractor shall be responsible for cleaning and testing the waterline prior to acceptance by the Owner. Testing shall include pressure testing and bacteriological testing per specifications included on the construction plans.

C. REFERENCES

1. American Institute of Steel Construction (AISC)
2. American Society of Testing and Materials (ASTM)
3. American Society of Civil Engineers (ASCE)
4. American Welding Society (AWS)
5. Steel Structures Painting Council (SSPC)
6. American Gear Manufacturers Association (AGMA)
7. American Water Works Association (AWWA)
8. American National Standards Institute (ANSI)

PART 4 - EARTHWORK

A. CLEARING

1. Remove all existing trees on site in conflict with proposed improvements.

2. Vegetative material will not be allowed to be buried onsite.

B. EXCAVATION

1. The pond shall be dewatered during construction sufficient to allow engineer or owners representative to verify approximate depth and shape below seasonal high water level.

2. Slopes above the seasonal high water level shall not exceed 4' horizontal to 1' vertical rise.

3. All disturbed areas within the right of ways shall be restored and sodded.

4. Sod finished grade around pond area with bahia sod.

5. Contractor will be responsible to dispose of all excess material from the site.

C. POWER SERVICE

1. Power supply for irrigation controller and water meter will be supplied from the existing power service box. Owner will have a meter installed by Duke Power.

2. Contractor to supply materials from meter to water meter and irrigation controller. Wires below ground must be enclosed in sch 40 pvc conduit.

3. All electrical connections to be performed by licensed electrical contractor.

D. LANDSCAPING

1. Landscaping to be installed per plan unless otherwise approved.

2. Landscaping to consist of a hedge between the proposed fence and roadway.

3. Hedge plants to be irrigated using poly pipe with 2 gph drip emitters or micro-jets

4. Irrigation supply to be connected to water service from water system. A meter and back flow device will be provided by the owner.

5. Timer to be installed in a weather proof housing. Timer to be capable of activating a solenoid valve to irrigate the hedge in 1 zone. Timer to be configurable to allow watering on a 7 day cycle.

END SECTION

GENERAL TERMS AND CONDITIONS

Article 1 - Contract Documents

1.1 Definitions

When one of the following capitalized words, terms or phrases is used in this contract, it shall be interpreted or construed first as defined below, second according to its generally accepted meaning in the construction industry, and third according to its common and customary usage.

Agreement: A written agreement between the Owner and a Contractor for provision of goods, products, materials, equipment, systems, management supervision, labor and services required to construct all or part of this Project.

Contractor: An entity, including but not limited to a general contractor, a trade contractor or a construction manager, engaged directly by the Owner pursuant to this Agreement.

Construction Price: The dollar amount for which a Contractor agrees to perform the Work set forth in this Agreement.

Construction Documents: Plans, specifications, change orders, revisions, addenda, supplementary conditions, and other information which set forth in detail the Work.:

Construction Schedule: The timetable which sets forth pertinent dates for timely completion of the Work.

Contract For Professional Services: A written agreement between the Owner and a Professional for provision of services and related items required to design or engineer all or part of this Project.

Declaration of Substantial Completion: Document declaring the Work substantially complete and suitable for occupancy or beneficial use by the Owner.

Final Completion The stage of construction when the Work has been completed in accordance with the Agreement and the owner has received all documents and Items necessary for closeout of the Work.

Hazardous Substances: The term "Hazardous substance" shall have the same meaning and definition as set forth in the Comprehensive Environmental Response compensation and Liability Act as amended, 42 U.S.C. § 6901 et seq, and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any solid Waste or Hazardous constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6901 et seq, and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (c) crude oil, petroleum and fractions of distillates thereof; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling; and (e) any infectious or medical waste as defined by any applicable federal or state laws or regulations.

Owner's Related Parties: Any parent, subsidiary or affiliated entities of the owner, including the respective officers, trustees, office holders, directors, shareholders, partners, and employees of each.

Professional: An entity, including but not limited to an architect, civil engineer or geotechnical engineer, engaged directly by the Owner to provide design or engineering services.

Project: The planned construction undertaking as more specifically defined in the Scope of Services.

Project Design Schedule: The timetable which sets forth the required relationships between, and pertinent dates for, required completion of design and engineering services, documents and related activities.

Site: The geographical location of the Project, usually defined by legal boundary lines, and the location characteristics including, but not limited to, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, existing buildings and improvements, and service and utility lines.

Substantial Completion: The stage of construction when the owner can occupy or beneficially use satisfactorily completed work for its intended purpose.

Total Project Construction Cost: The total cost to the Owner to complete construction of the Project, including, without limitation the Work, the cost of utilities, the cost of fees for permits and licenses, and modifications necessitated by local conditions.

Work: Any and all computers, construction machinery, documents, equipment, facilities, fixtures, furnishings, goods, heat, items, labor, licenses, management, materials, permits, products, services, supervision, supplies, systems, taxes, testing, tools, utilities, transportation, vehicles, and water, required to be performed or supplied and/or necessary for proper execution and completion of the Project, or some portion thereof, whether or not incorporated or to be incorporated into the Project.

1.2 Additional Sets of Documents

Any additional copies of the Construction Documents required by the Contractor for execution of the Work shall be made by the Contractor at its cost and expense from the reproducible set(s) furnished by the Owner.

1.3 Return of Documents to Owner

The Contractor shall return to the Owner the reproducible set(s), and all copies, of the Construction Documents upon Final Completion of the Work or termination of this Agreement.

1.4 Electronic Media

Unless otherwise specified in this Agreement, the Contractor may request that the Construction Documents required by the Contractor for the Work be furnished to it on electronic media. To the extent that such documents are available on electronic media, the Contractor will be furnished one set of the requested information on electronic media. Any additional electronic copies of Construction Documents required by the Contractor for execution of the Work shall be made by the Contractor at the Contractor's cost and expense. The Contractor shall return one copy of electronic Construction Documents to the Owner upon final acceptance of the Work or termination of this Agreement, whichever occurs first, and shall destroy all remaining electronic copies of the documents within its possession.

1.5 Minimum Requirements

In every case, requirements established by the Construction Documents shall be considered as the minimum which will be accepted.

1.6 Owner Disclaimer of Warranty

The Owner has requested that its Professional(s) prepare documents for the Project, including the plans and specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work, however, the Owner makes no representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

1.7 Conflicts in Documents

In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Agreement, the following shall control:

- 1.7.1 As between figures given on plans and scaled measurements, the figures shall govern;
- 1.7.2 As between large-scale plans and small-scale plans, the large-scale plans shall govern;
- 1.7.3 As between plans and specifications, the requirements of the specifications shall govern;
- 1.7.4 As between this document and the plans, specifications, or supplementary conditions, this document shall govern.

1.8 Shop Drawings and Submittals

Shop drawings and other submittals from the Contractor or its subcontractors and suppliers do not constitute a part of this Agreement.

1.9 Contract Changes

The Contractor understands and agrees that this Agreement cannot be changed except as expressly provided herein. No act, omission, course of conduct, or course of dealing by the parties shall alter the requirement and that modifications of this Project Agreement can be accomplished only by written documents signed by the parties. Express written notice is a non-waivable condition precedent in connection with all changes and claims arising under or relating to this Agreement.

Article 2 - Contractors Reviews and Evaluations

2.1 Sufficiency of Construction Documents and Drawings

The Contractor acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Owner and the Professional(s) about any (i) problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the construction Documents; and (ii) variances it discovers between the Construction Documents and applicable laws statutes, building codes, rules and regulations.

- 2.1.1 If the Contractor performs any Work which it knows or should have known involves (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Professional(s) and prior to receiving written authorization from the appropriate Professional(s) to proceed, the Contractor shall be responsible for the consequences of such performance.
- 2.1.2 Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the Contractor and subcontractors shall verify all measurements at the site and shall be responsible for the correctness of same.

Discrepancies shall be reported in writing to the Professional prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between actual measurements and dimensions indicated on drawings, if such differences do not result in a change in the scope of Work or if the Professional(s) failed to receive written notice before the Work was performed.

2.2 Sufficiency of Site

Prior to signing this Agreement, the Contractor has:

- (i) visited the Site and become familiar with local conditions under which the Project is to be constructed and operated; and
- (ii) reviewed and familiarized itself with the Site survey and any existing structures on the Site, and gathered all other information necessary for a full understanding of the Work. In addition, if the Work involves modifications to or remodeling of an existing structure(s) or other man-made feature(s) on the Site, the Contractor has also
- (iii) reviewed all available as-built and record drawings, plans and specifications; and
- (iv) thoroughly inspected the structure(s) and man-made feature(s) to be modified or remodeled prior to submission of bid, if any, but in all events prior to signing this Agreement.

Claims resulting from the Contractor's failure to familiarize itself with the Site or pertinent documents as provided herein shall be deemed waived.

Article 3 - Contractors Duties, Obligations and Responsibilities

3.1 Performance of Work

The Contractor shall perform and complete its obligations under this Agreement using its best skill and attention, and covenants with the Owner to furnish management, supervision, coordination, labor and services (i) which expeditiously, economically and properly completes the Work in the manner most consistent with the Owner's interests and objectives; (ii) which comply with the Construction Documents and this Agreement; and (iii) in accordance with the highest standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.

- 3.1.1 All services rendered by the Contractor for the Project shall be performed by or under the immediate supervision of persons possessing expertise in the discipline of the service being rendered.
- 3.1.2 The Contractor shall, in the course of providing the Work, cooperate and communicate with the Owner and all other persons or entities as required for satisfactory completion of the Project.
- 3.1.3 The Contractor understands and acknowledges that the Work referred to in this Agreement may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same site. The Contractor shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the site.
- 3.1.4 The Contractor shall not damage, endanger, compromise or destroy any part of the Project or the Site, including by way of example and not limitation, Work being performed by others on the site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or

structures on the site. Should the Contractor damage, compromise or destroy any part of the Project or the Site, the Contractor shall be fully and exclusively responsible for and bear all costs associated therewith.

3.2 Compliance With Governmental Requirements

The Contractor shall:

- (i) comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;
- (ii) prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including building permit(s), of all governmental authorities having jurisdiction over the Work; and
- (iii) give all notices required of it by governmental authorities relating to the Project.

3.3 Safety

Safety shall be a prime concern of the Contractor at all times. The Contractor shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and constructing the Work, including site safety and safety precautions and programs.

3.4 Concurrent Records

The Contractor shall, concurrently with performance, maintain detailed records of activities on the site.

3.5 As-Built Drawings

The Contractor shall maintain at the site one copy of all drawings, specifications, addenda, approved shop drawings, change orders, submittals, and other modifications in good order and accurately marked depicting all changes as they occur during construction. The as-built drawings shall be available at all times to the owner, the Professional(s), the owner's consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the Contractor shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction.

3.6 Bribes and Kick-Backs

The Contractor shall not by any means;

- (i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;
- (ii) confer on any governmental, public or quasi-public official having any authority or influence over the project, any payment, loan, subscription, advance, deposit of money, services or anything of value, present or promised;
- (iii) offer or accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of project goods and materials; or

- (iv) without the express written permission of the owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the Contractor has a direct or indirect proprietary or other pecuniary interest

3.7 Quality Control and Testing

The Contractor shall develop and implement a quality management program to insure quality construction. Unless otherwise specified in this Agreement, the Owner shall select the quality control and testing agencies and pay for the cost of specified measures and tests required by the construction documents. The Contractor shall coordinate all tests and inspections required by the construction documents, and the Contractor shall arrange for tests and inspections to be conducted as necessary to avoid any interference with the progress of work. No claims for extension of time or extra costs will be allowed on account of any testing, retesting, inspection, re-inspection, or rejection of work when defective or deficient work is found.

3.8 Incident Reporting

The Contractor shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, delays, damages to work and other significant occurrences.

3.9 Hazardous Substances

The Contractor shall immediately notify the Owner and the Professional(s), both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination on the Site (including but not limited to hazardous substances and petroleum releases) of which it becomes, or reasonably should have become, aware. If the Contractor encounters environmental contamination (including but not limited to hazardous substances and petroleum releases), the Contractor shall (i) immediately stop performance of work or that portion of the work affected by or affecting such contamination; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the contamination; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such contamination until directed to do so by the owner; and (v) take any other steps necessary to protect life and health.

3.10 Owners Use of and Access to the Site

The Contractor shall perform the Work so as not to interrupt any operations of the Owner on the site.

- 3.10.1 The Contractor understands and acknowledges that the Owner may need access to or use of certain areas of the site or Work prior to the Contractor's achievement of substantial completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work.
- 3.10.2 The Contractor shall not enter any owner-occupied area of the site or project unless first approved and scheduled by the Owner. The Contractor understands and acknowledges that the Owner may incur damages if the Owner's operations on the site are interrupted or impaired as a result of the Work.
- 3.10.3 The Contractor shall afford the Owner's own forces, and other consultants, trade contractors, subcontractors and suppliers, access to the site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.

3.11 Commissioning

The Contractor shall, through the Owner's Representative, schedule and coordinate all equipment and systems start-ups and Project commissioning within its scope of the Work.

- 3.11.1 The Contractor shall provide the Owner with operation and maintenance manuals and other operational documentation not less than twenty-eight calendar days prior to the required date of Substantial Completion to allow adequate time for training prior to commissioning and the owner's occupancy of the Project.
- 3.11.2 The Contractor shall meet with the Owner's personnel not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to familiarize and train them with respect to maintenance and use of the Project. The appropriate Professional(s) will attend and assist with such familiarization and training.

Article 4 • Contractors Personnel, Subcontractors, Suppliers and site Facilities

4.1 Project Staffing

The Contractor shall staff the Project with qualified and designated individuals and entities responsible for its obligations and performance.

- 4.1.1 The Contractor shall name a representative (the "Contractor's Representative") to serve as its primary communication contact with the Owner and the Professional(s).
- 4.1.2 The Contractor shall employ persons skilled in the tasks assigned to them and shall contract with subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all trades, crafts and other individuals on the Project. The Contractor shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.
- 4.1.3 The Contractor shall immediately remove from the site, for the duration of the project, any person making an inappropriate religious, racial sexual or ethnic comment, statement or gesture toward any other Individual.
- 4.1.4 The Contractor shall immediately remove from the site, for the duration of the project, any person who is incompetent, careless, or not working in harmony. Owner shall have the right to require the removal of such persons in writing and at Owner's sole discretion.
- 4.1.5 The Contractor shall be responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.

4.2 Subcontractor / Supplier Contracts

The Contractor shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with this Agreement.

- 4.2.1 The Contractor shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this Agreement, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.
- 4.2.2 The Contractor shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that

it has received and reviewed the applicable terms, conditions and requirements of this Agreement that are included by reference in its written contract with the Contractor, and that it will abide by those terms, conditions and requirements.

- 4.2.3 The Contractor's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of this Agreement and upon written request of the Owner, the Contractor's subcontractors and suppliers will perform services for the owner.

4.3 Resolution Of Trade Disputes

The Contractor shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.

Article 5 - Goods, Products and Materials

5.1 Quality Of Materials

The Contractor shall furnish goods, products, materials, equipment and systems which:

- (i) comply with this Agreement;
- (ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;
- (iii) are new (unless otherwise specified or permitted) and without apparent damage;
- (iv) are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;
- (v) are merchantable;
- (vi) are free from defects; and
- (vii) are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.

5.2 Installation And Use Of Materials

All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case the Contractor shall so inform the Owner and the appropriate Professional and shall proceed as directed by that Professional, unless otherwise directed by the Owner. The Contractor shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.

5.3 Unsuitable Materials

The Contractor shall inform the Owner of goods, products, materials, equipment or systems which the Contractor knows or should have known are unsuitable or unavailable at the time of bid submission, and claims relating to or arising out of claims that goods, products, materials, equipment or systems are unsuitable or unavailable shall not be entertained by the owner unless the Contractor, subcontractor, or

supplier notified the owner in writing at the time of bid submission, along with proposed alternatives. Approval by the owner and a Professional of substitute goods, products, materials, equipment or systems does not mean or imply final acceptance by the Owner and Professional if such items should be defective or not as previously represented. Should the Contractor furnish any approved goods, products, materials, equipment or systems different from or in addition to those required by the Construction Documents which require supplemental materials or installation procedures different from or in addition to those required for specified items, the Contractor shall provide such at no increased cost to the Owner.

5.3.1 Security For The Project

The Contractor shall provide security for the project, including but not limited to security for its work in progress and for the goods, products, materials, equipment systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work.

Article 6 - Documents and Information

6.1 Information From Owner

The Owner shall provide the Contractor with information reasonably necessary to assist the Contractor in performing its services including, if applicable:

- (i) the site legal description and any required survey;
- (ii) all written and tangible material in its possession concerning conditions/ below ground at the Site;
- (iii) if the Project involves an existing structure, all available as-built drawings, record drawings, plans, specifications and structure system information with respect to such structure; and
- (iv) the Owner's pertinent Project dates and key milestone dates.

6.2 Processing of Documents

When requested to do so by the owner, the Contractor shall process documents, and provide other reasonably required drawings, services and certifications, necessary to enable the owner to (i) obtain financing or insurance for the project; (ii) obtain approvals, permits and certificates of occupancy for the project not otherwise required to be obtained by Contractor; and to represent that the Work complies with requirements of governmental agencies having jurisdiction over the project.

6.3 Sufficiency of Owner Information

The furnishing of information by the Owner to the Contractor shall not relieve the Contractor of responsibilities contained elsewhere in this Agreement to evaluate information and documents provided by the Owner and the Contractor shall timely notify the Owner in writing of any additional information needed or services required from the Owner in order for the Contractor to perform the Work.

Article 7 – Submittals

7.1 Submittal Schedule

The Contractor shall timely prepare and transmit to the Professional a schedule for provision of all anticipated submittals. The schedule shall (i) include submittals required by the specifications; (ii) be in a format acceptable to the Professional; and (iii) set forth specific dates for submission of the listed submittals. The Contractor shall review and approve all submittals prior to submission to a Professional.

7.2 Processing of Submittals

The Contractor shall in timely fashion review, approve if appropriate and forward submittals to the Professional(s) for review and approval along with such detail and information, as the Professional requires. No part of the Work dealt with by a submittal shall be fabricated or performed until such approval has been given.

7.2.1 A Professional is responsible to the Owner, but not to the Contractor, to verify that the submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals are of the quality specified and will function properly, and that the submittals comply with the Agreement.

7.2.2 All Work shall be performed in accordance with approved submittals. Approval of submittals by a Professional shall not relieve the Contractor from complying with this Agreement, including all plans and specifications, except as changed by change order.

Article 8 - Contractors Inspection and Correction of Defective or Incomplete Work

8.1 Rejection And Correction of Work in Progress

During the course of Project, the Contractor shall inspect and promptly reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

8.1.1 The Contractor shall promptly correct or require the correction of all rejected work, whether observed before or after substantial completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction.

8.1.2 The Contractor shall bear the cost of correcting destroyed or damaged work, whether completed or partially completed, of the Owner or other trade contractors or subcontractors caused by the Contractor's correction or removal of rejected Work.

8.2 Covered Or Concealed Work

If a portion of the Work has been covered, the Contractor shall, if notified to do so by the Owner or a Professional, uncover the designated portion for observation and then replace it.

8.2.1 If the designated portion of the Work was covered contrary to the request of the Owner or the Professional, or to requirements specifically expressed in the Construction Documents, the Contractor shall receive no additional compensation for the costs of uncovering and replacement or modification of the construction schedule.

8.2.2 If the designated portion of the Work was covered prior to a specific request by the Owner or the Professional that it remain uncovered, the Contractor shall receive additional compensation for the costs of uncovering and replacement or modification of the Construction Scheduled only if the designated portion of the Work was in conformance with the Construction Documents.

Article 9 - Change Orders and Changes to the Work

9.1 Change Order Requests

Any party to the construction process may request changes to the Work, compensation or applicable schedules.

- 9.1.1 With respect to such requests for changes by the Contractor, the Contractor shall prepare and submit written change order requests to the Professional within seven (7) days of the time that the Contractor becomes aware of the circumstances that the Contractor contends necessitates the change.
- 9.1.2 With respect to requests for changes by parties other than the Contractor, the Contractor shall review and respond to such change order requests within seven (7) days of receipt by the Contractor.
- 9.1.3 When requested to do so, the Contractor shall prepare and submit to a Professional, drawings, specifications or other data in support of a change order request.
- 9.1.4 Each change order shall include time and monetary impacts of the change as appropriate and shall constitute a complete and final settlement of all costs and impacts of whatever nature associated with the change, including, without limitation, the impact of the change on base contract Work. No changes or claims shall be allowed based upon cumulative impact.

9.2 Owner-Directed Changes

The Owner may unilaterally direct the Contractor to implement changes in the Work so long as the Work the Owner is requiring is not outside of the general scope of this Agreement, and the Contractor, upon written direction from the Owner, shall proceed with such change.

9.3 Professional-Directed Changes

A Professional, without the Owner's prior approval, may authorize or direct the Contractor to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and the Contractor shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the Contractor.

9.4 Administration of Changes

A Professional will administer and manage all change order requests and change orders and will prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and change orders. The Professional shall submit such documents to the Owner for review and approval prior to implementation.

9.5 Compensation for Changes

With respect to all change order requests involving credit to the Owner or additional compensation to the Contractor, the Contractor shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the designated Professional.

- 9.5.1 If price quotations for change order requests are determined by the Professional to be unreasonable, the Contractor shall, in writing, justify said quotations or provide additional back-up materials, if after review of the additional information the Professional determines the quotation is unreasonable, the owner may require the subject work be performed on a time and material basis.
- 9.5.2 The Contractor and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by this Agreement, and in connection with changes, shall not be entitled to additional reimbursement for home-office, other non-job-site or indirect overhead expenses, or tools necessary for construction.
- 9.5.2 It is the responsibility of the Contractor to review and approve all pricing of additional work required of its subcontractors and suppliers.

9.6 Performance Of Change

Upon receipt of a field order or change order that has been approved by the Owner, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.

9.7 Disputes Regarding Changes

- 9.7.1 Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the Owner so directs. No claim shall be prejudiced by performance of the Work so long as the Owner is timely notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the Owner recites the reasons for its dispute in the written notice. Failure to notify the Owner in writing shall constitute a waiver of any claim resulting from the change.
- 9.7.2 In the event a change order request is approved by the Owner in the absence of an agreement as to cost, time, or both, the appropriate Professional will (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the Owner's behalf; (iii) take such other action as may be reasonably necessary or as the Owner may request; and (iv) make a written recommendation to the Owner concerning any appropriate adjustment in the Construction Price or time.

9.8 Necessity for Signed Writing

No act, omission, course of conduct, or course of dealing shall alter the requirement that change orders shall be in writing and signed by the Owner, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The Contractor understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, conduct, oral agreement, or unwritten change order. Express written notice is a non-waivable condition precedent to Contractor's right to recover under this Article 9 and this Agreement generally.

Article 10 - Financial Claims and Liens

10.1 Notification Regarding Liens

The Contractor shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of any mechanics' liens, construction liens, Contractor's trust fund claims, or claims of

any type made by anyone against the Owner, the Professional(s), the Contractor or any subcontractor or supplier of any of them or against the Project whether or not such claims arise from the Work.

10.2 Discharge Of Liens

The Contractor shall take all action necessary to obtain the prompt discharge of any liens or claims filed against the Project. If any lien or claim filed against the Project is not discharged and released by the claimant the Contractor shall, within a reasonable period of time, but in no event more than fourteen calendar days after written request from the Owner and at its own cost promptly obtain discharge and release of, or indemnity for, such lien or claim by providing or filing, as appropriate, the requisite bond. If the Contractor fails to have any such lien or claim discharged and released, or fails to provide or file the requisite bond, the Owner shall have the right to pay any sums necessary to obtain such a discharge and release, and the Contractor shall bear all expenses incurred by the Owner in so doing.

Article 11 – Owner’s Consultant(s), Professional(s) and Construction Administration

11.1 Owner's Designated Professional Representative

Unless otherwise directed by the Owner, one designated Professional shall act as the Owner's representative from the effective date of this Agreement until one year from the date of achievement of Substantial Completion.

11.1.1 The Professional so designated will be the Owner's design representative during performance of the Work and will consult with and advise the Owner on all design and technical matters.

11.1.2 The designated Professional will act as initial interpreter of the requirements of this Agreement and as the Owner’s advisor on claims.

11.2 Professional Site Visits

The Professional(s) will visit the site with sufficient frequency for familiarization with the progress and quality of the Work and to inspect the Work to determine compliance of the Work with (i) this Agreement, including approved shop drawings and other submittals; (ii) the Construction Schedule; and (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project. No site or construction work that is to be covered shall be covered until the Professional has inspected the Work and provided a written report of the inspection to the Owner.

11.3 Professional Rejection of Work

The Professional(s) may disapprove or reject Work which does not comply with (i) this Agreement including approved shop drawings and other submittals; or (ii) applicable laws, statutes, building codes, rules or regulations of any governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

11.4 Professional Evaluations

11.4.1 The Professional(s) will review and evaluate the results of all inspections, tests and written reports required by this Agreement and by any governmental entity having or asserting jurisdiction over the Project. The Professional(s) will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s). The Professional(s) will promptly reject Work, which does not conform to and comply with testing requirements.

11.4.2 The Professional(s) may require inspection or testing of any work in addition to that required by this Agreement or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Professional(s) will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s).

11.5 Professional Submittal Activities

The Professional(s) will review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions within not more than fourteen calendar days, and will not approve any submittals unless such submittals conform with (i) the Project design concept; (ii) this Agreement; and (iii) the Owner's budgeted Total Project Construction cost. A Professional's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the Construction Documents. The Contractor remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques of assembly, and for performance of the Work.

11.6 Professional Interpretations

A Professional will, when requested to do so in writing by the Contractor, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. A Professional's interpretations and decisions relating to artistic effect shall be final if not inconsistent with this Agreement.

11.7 Professional Change Order Activities

The Professional(s) will consult with and advise the Owner concerning, and will administer and manage, all change order requests and change orders on behalf of the Owner.

11.8 Professional Pay Application Activities

The appropriate Professional will review applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the Contractor and shall authorize payment by the Owner to the Contractor in writing. After the Work is determined to be finally complete and the Professional determines that the Contractor has completed the Work, the Professional will determine whether the Contractor is entitled to final payment, and if so will so certify to the Owner in writing.

11.9 Professional Relationship To Contractor

The duties, obligations and responsibilities of the Contractor under this Agreement shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of any Professional. The Contractor shall not be a third-party beneficiary of any agreement by and between the Owner and any Professional. The duties of the Contractor to the Owner shall be independent of, and shall not be diminished by, any duties or obligations of any Professional to the Owner.

Article 12 - Inspection, Correction of Work And Project Close Out

12.1 Substantial Completion

Substantial Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Substantial Completion inspection, and the required Substantial Completion documentation and items have been produced.

12.1.1 When the Contractor believes that the Work is Substantially Complete, it shall notify the Owner and the appropriate Professional that its work is ready for a Substantial Completion inspection.

12.1.2 At or prior to the Substantial Completion inspection, the Contractor will prepare and furnish to the Professional a Declaration of Substantial Completion, which at a minimum must:

- (i) contain a blank for entry of the date of Substantial Completion, which date will fix the commencement date of warranties and guaranties and allocate between the Owner and the Contractor responsibility for security, utilities, damage to the work and insurance;
- (ii) include a list of items to be completed or corrected and state the time within which the listed items will be completed or corrected; and
- (iii) contain signature lines for the Owner, the Contractor and the Professional.

12.1.3 Upon receipt of notification from the Contractor the appropriate Professional will coordinate with the Owner and the Contractor a date for inspection of the Work to determine whether the Work is Substantially Complete.

12.1.4 At inspection(s) to determine whether the Work is Substantially Complete, the Professional will:

- (i) inspect the Work;
- (ii) list additional items to be completed or corrected; and
- (iii) determine, in consultation with the Owner, whether Substantial Completion of the Work has occurred.

12.1.5 If the Work is determined not to be Substantially Complete, the Work shall be prosecuted until the Work is Substantially Complete and the inspection process shall be repeated at no additional cost to the Owner until the Work is determined to be Substantially Complete.

12.1.6 On or prior to the required date of Substantial Completion, the Contractor shall deliver to the appropriate Professional keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for the Owners occupancy and use of the Work for its intended purpose. The Professional will obtain and review Substantial Completion documentation and items, and will inform the Contractor of any deficiencies.

12.1.6 When the Owner, the Contractor and the appropriate Professional agree that the Work has passed the Substantial Completion inspection and the Contractor has produced the required Substantial Completion documentation and items, they shall each sign the Declaration of Substantial Completion declaring the work Substantially Complete and establishing the actual date of Substantial Completion. The Declaration of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction.

12.2 Final completion

Final Completion of the work shall be deemed to have occurred on the later of the dates that the Work passes a Final Completion inspection and that the Contractor has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due the Contractor or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to the Owner by the Contractor.

- 12.2.1 When the Contractor believes the Work is Finally Complete, the Contractor shall notify the Owner and the appropriate Professional that the Work is ready for Final Completion inspection.
- 12.2.2 Upon receipt of such notification from the Contractor, the Professional will coordinate with the Owner and the Contractor a date for Inspection of the Work to determine whether the Work is Finally Complete.
- 12.2.3 At the Final Completion inspection to determine whether the work is finally complete, the Professional will:
- (i) inspect the Work;
 - (ii) determine whether all items on the list included with the Declaration of Substantial Completion have been satisfactorily completed and corrected;
 - (iii) determine whether the Work complies with (a) this Agreement; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards;
 - (iv) determine whether required inspections and approvals by the officials having or asserting jurisdiction over the Project have been satisfactorily completed; and
 - (v) determine, in consultation with the Owner, whether the Work is Finally Complete.
- 12.2.4 If the work is not Finally Complete, the Contractor shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to the Owner, until the Work is Finally Complete.
- 12.2.5 On or prior to the date of Final Completion, the Contractor shall deliver to the appropriate Professional the following Final Completion close-out documentation and items:
- (i) all operating and instruction manuals not previously produced during commissioning and required maintenance stocks;
 - (ii) two (2) sets of as-built drawings and markups;
 - (iii) certification and affidavit that all insurance required of the Contractor beyond final payment if any, is in effect and will not be canceled or allowed to expire without notice to the Owner;
 - (iv) written consent of the surety(ies), if any, to final payment;

- (v) full, final and unconditional waivers of mechanics or construction liens, releases of Contractor's trust fund or similar claims, and release of security interests or encumbrances on the Project property from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim against the Owner or the Owner's property;
- (vi) full, final and unconditional certification and affidavit that all of the Contractor's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;
- (vii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;
- (viii) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
- (ix) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and
- (x) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.

12.2.5 The appropriate Professional will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion which are submitted by the Contractor, and will immediately inform the Contractor about any deficiencies and omissions.

Article 13 - Contractors Warranties and Guarantees

13.1 One-Year Warranty

In addition to the warranties and guarantees set forth elsewhere in this Agreement, the Contractor, upon request by the Owner or the Professional, shall promptly correct all failures or defects in the Work for a period of one year after the actual date of Substantial Completion.

13.1.1 The Contractor shall schedule, coordinate and participate in a walk-through inspection of the Work one month prior to the expiration of the one-year correction period, and shall notify the Owner, the appropriate Professional(s), and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

13.1.2 Should the Contractor fail to promptly correct any failure or defect, the Owner may take whatever actions it deems necessary to remedy the failure or defect and the Contractor shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the Contractor's failure to correct the failure or defect.

13.2 Express Warranties And Guarantees – Contractor

In addition to the warranties and guarantees set forth elsewhere herein, the Contractor expressly warrants and guarantees to the owner:

- (i) that the Work complies with (a) the Construction Documents; and (b) this Agreement; (c) all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

- (ii) that all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality equal to or higher than that required by the Construction Documents; and (c) merchantable; and
- (iii) that all management, supervision, labor and services required for the work shall comply with this Agreement and shall be and are performed in a workmanlike manner.

13.3 Express warranties And Guarantees - Subcontractors And Suppliers

The Contractor shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the Contractor in a form identical to the warranties, guarantees and other undertakings set forth in this Agreement, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of the Owner as well as the Contractor.

13.4 Non-Exclusivity And Survival

The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, implied or statutory, and shall survive the Owner's payment, acceptance, inspection of or failure to inspect the work, and review of the Construction Documents.

13.5 Non-Limitation

Nothing contained in Paragraph 13.1, shall be construed to establish a period of limitation with respect to the Contractor's obligations under this Agreement. Paragraph 13.1 relates only to the Contractor's specific obligations with respect to the Work, and has no relationship to the time within which the Contractor's contractual obligations under this Agreement may be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to any contractual obligations pursuant to Paragraph 13.1 or contained elsewhere herein.

13.6 Commencement Of Obligations

Unless otherwise specified, all of the Contractor's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents, shall begin on the actual date of substantial Completion.

Article 14 – Owner's Duties, Obligations and Responsibilities

14.1 Timely Compensation Of Contractor

The Owner shall timely compensate the Contractor in accordance with this Agreement.

14.2 Payment for Testing

Unless otherwise required to be provided by the Contractor in its scope of services, Owner shall secure and pay for all Project testing.

14.3 Owner Review Of Documents

The Owner shall review documents prepared by the Contractor in a timely manner and in accordance with schedule requirements. Review by the owner shall be solely for the purpose of determining whether such

documents are generally consistent with the Owner's intent. No review of such documents shall relieve the Contractor of any of its responsibilities.

14.4 Status Of Owner

The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, nor shall the Contractor, for any of the foregoing purposes, be deemed the agent of the Owner.

14.5 Owners Utilities

The Owner shall provide water, gas and electrical energy only as they exist at the Site prior to the start of construction. The Contractor shall be responsible to provide and pay for connections to, extensions from and means of using these utilities.

14.5.1 The Owner will pay utility company bills for water, gas and electrical energy which is required for the Project and which passes through the Owner's meters. However, the Owner shall not pay for (i) water which is expended without proper regard for ecological and conservation considerations; (ii) electrical energy expended in electric heating devices; or (iii) utilities for Contractor's field offices.

14.5.2 Acceptance by the Contractor of the use of the Owner's water, gas and electrical energy constitutes a release from the Contractor to the Owner of all claims and liability for any damages or losses which may be incurred by the Contractor as a result of water, gas and electrical energy outages or voltage variations or surges,

Article 15 – Contractor's Compensation

15.1 Unit Prices

If any portion of the Construction Price is determined by the application of unit prices, the number of units contained in the Contractor's compensation schedule is an estimate only, and the compensation to the Contractor shall be determined by the actual number of units incorporated in, or required by, the Work.

15.2 Schedule of Values

The Contractor shall prepare and present to the Owner and the designated Professional the Contractor's schedule of values, apportioning the different elements of the Work for purposes of periodic and final payment. The Contractor's schedule of values shall be presented in the format, and with such detail and supporting information, requested by the Professional or Owner. The Contractor shall not imbalance or artificially inflates any element of its schedule of values. Upon the Professional and Owner's acceptance, the schedule of values shall be used to process and pay the Contractor's payment requests. The schedule of values shall not be changed without written change order authorized by the Owner

15.3 Invoicing Procedures

In accordance with the procedures and requirements set forth in this Article, the Contractor shall invoice the Owner and the Owner shall pay the Contractor the Construction Price.

15.3.1 At least every thirty calendar days after commencement of performance, but no more frequently than once a month, the Contractor shall submit invoices to the Professional requesting payment for labor and services rendered during the preceding thirty calendar days. Each invoice shall contain such detail and be backed up with whatever supporting information the Owner or a Professional requests and shall at a minimum state;

- (i) the total Construction Price;
- (ii) the amount due for properly provided labor, materials and equipment properly incorporated into the Project; and with respect to amounts invoiced for materials or equipment necessary for the Project and properly stored at the Site (or elsewhere if offsite storage is approved in writing by the Owner), be accompanied by written proof that the Owner has title to such materials or equipment and that such material and equipment is fully insured against loss or damage;
- (iii) a breakdown of the various phases or parts of the work as related to the Construction Price;
- (iv) the value of the various phases or parts of the Work actually performed;
- (v) previously invoiced amounts and credit payments made;
- (vi) the total amount due, less any agreed retainage; and shall also have attached such lien waivers, affidavits, and other documentation verifying the Contractor's payment to subcontractors and suppliers as the Owner or a Professional may request.

15.4 Payment Procedures

15.4.1 Within ten (10) days of submission by Contractor, the Professional will review the Contractor's applications for payment including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the Contractor and, based upon such review, together with its inspections of the Work, shall authorize payment by the Owner to the Contractor in writing. Such authorization will constitute the Professional's certification to the Owner that

- (i) the work described in the Contractors invoice has progressed to the level indicated and has been performed in accordance with the Agreement;
- (ii) all necessary and appropriate lien waivers and affidavits have been submitted; and
- (iii) the amount requested is currently due and owing to the Contractor.

15.4.2 In the case of unit price work, the Professional's recommendations for payment will constitute a final determination of quantities and classifications of such work.

15.4.3 Payments shall be deemed timely if made by Owner within thirty (30) days of receipt by Owner of the Professional's authorization to make payment.

15.4.4 The Owner may retain a maximum of 10 percent of the total amount of the contract pending final approval.

15.5 Owners Right To Refuse Payment

A Professional's approval of the Contractor's invoice shall not preclude the Owner from exercising any of its remedies afforded by this Agreement. In the event of a dispute, payment shall be made on or before the payment date for amounts not in dispute, subject to any setoffs claimed by the Owner. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:

- (i) the Contractor's failure to perform the work in compliance with the requirements of this Agreement or any other agreement between the parties;
- (ii) the Contractor's failure to correctly and accurately represent the work performed in a payment request, or otherwise;

- (iii) the Contractor's performance of the work at a rate or in a manner that, in the Owner's opinion, is likely to result in the Project or any portion of the Project being inexcusably delayed;
- (iv) the Contractor's failure to use funds previously paid the Contractor by the Owner, to pay the Contractor's Project-related obligations including, but not limited to, the Contractor's subcontractors, material men, and suppliers;
- (v) claims made, or likely to be made, against the Owner or its property;
- (vi) loss caused by the Contractor or the Contractor's subcontractors, or suppliers; or
- (vii) the Contractor's failure or refusal to perform any of its obligations to the Owner.

15.6 Contractors Right To Refuse Performance For Non-Payment

If within twenty (20) calendar days from the date payment is due hereunder, the Owner, without cause or basis hereunder, fails to pay the Contractor any amounts then due and payable to the Contractor, the Contractor shall have the right, in addition to all other rights and remedies contained herein, to cease performance of the work until receipt of proper payment after first providing fourteen calendar days written notice to the Owner of its intent to cease work.

15.7 Correction Of Past Payments

All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any subsequent payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent timely payment, the Owner shall notify the Contractor in writing of such defect or impropriety. Any disputed amounts determined by the Owner to be payable to the Contractor shall be due twenty (20) calendar days from the date the dispute is resolved.

15.8 Interest on Outstanding Amounts Due

Interest shall accrue on amounts owed by the Owner to the Contractor, which remain unpaid thirty calendar days following the date on which payment is due. Said interest shall accrue at the judgment rate then applicable in accordance with Florida statutes.

15.8.1 No interest shall accrue when payment is delayed because of a dispute between the Owner and the Contractor, or a dispute as to the accuracy or completeness of any request for payment received. This exception to the accrual of interest shall apply only to that portion of a delayed payment, which is actually the subject of the dispute and shall apply only for the duration of such disagreement. Nor shall interest accrue on retainage, which is withheld to assure performance of this Agreement.

15.9 Invoice Warranties And Guarantees

The Contractor expressly warrants and guarantees to the Owner that

- (i) title to all goods, products, materials, equipment and systems covered by an invoice will pass to the Owner either by incorporation into the Work, or upon receipt of payment by the Contractor, whichever occurs first;

- (ii) all goods, products, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances; and
- (iii) no goods, products, materials, equipment or systems covered by an invoice have been acquired by the Contractor, or its subcontractors or suppliers, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor, or its subcontractors or suppliers.

15.10 Contractor's Signature

The signature of the Contractor on any invoice constitutes the Contractor's certification to the Owner that (i) the Contractor's services listed in the invoice have progressed to the level indicated and have been performed as required by this Project Agreement; (ii) the Contractor has paid its subcontractors and suppliers their proportional share of all previous payments received from the Owner and that its payments to such subcontractors and suppliers conforms with the requirements of applicable prompt payment statutes; and (iii) the amount requested is currently due and owing.

15.11 Taxes

The Contractor shall incorporate into the Construction Price, and pay, all sales, consumer, use and similar taxes for goods, products, materials, equipment and systems incorporated into the Work which were legally required at the time of execution of this Agreement, whether or not yet effective or merely scheduled to go into effect. The Contractor shall secure, defend, protect, hold harmless, and indemnify the Owner from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) relating to any taxes assessed or imposed upon, incurred by or asserted against the Owner by any taxing authority with respect to such taxes. The Contractor shall cooperate with and assist the Owner in securing qualified refunds of any sales or use tax paid by the Owner or Contractor on goods, products, materials, equipment or systems. Any refund secured shall be paid to the Owner.

15.12 Compensation of Contractor's Subcontractors And Suppliers

Upon receipt of payment from the Owner, the Contractor shall pay each of its subcontractors and suppliers out of the amount received by the Contractor on account of such subcontractor's or suppliers portion of the work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to the Contractor on account of such entity's portion of the Work. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the Contractor's subcontractors or suppliers. However, the Owner reserves the right, but has no duty, to make payment jointly to the Contractor and to any of its subcontractors or suppliers in the event that the Owner becomes aware that the Contractor fails to pay or unreasonably withholds payment from one or more of those entities. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

15.13 Final Payment

Prior to being entitled to receive final payment, and as a condition precedent thereto, the Contractor must achieve Final Completion. The Owner shall, subject to its rights set forth above in this Article, make final payment of all sums due the Contractor within fourteen calendar days of a Professional's execution of a final approval for payment.

Article 16 - Schedule Requirements

16.1 Construction Schedule

The construction schedule shall include all pertinent dates and periods for timely completion of the Work.

- 16.1.1 Unless otherwise directed and approved by the Owner, the Contractor shall prepare and submit within thirty (30) days of Agreement execution, the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that the work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.
- 16.1.2 The Construction Schedule shall include (i) the required commencement date, the required dates of Substantial Completion and Final Completion; (ii) any guideline and milestone dates required by the owner; (iii) any applicable subcontractor and supplier sub-schedules; (iv) a submittal schedule which allows sufficient time for review of documents and submittals; (v) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and (vi) required decision dates.
- 16.1.3 By reviewing the Construction Schedule, the Owner and a Professional do not assume any of the Contractor's responsibility (i) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates required by the Owner.
- 16.1.4 The Contractor shall review, on a weekly basis, the actual status of the work against the Construction Schedule. The Contractor shall discuss the status of the work weekly with the designated Professional, so that proper overall management may be provided.
- 16.1.5 The Contractor shall periodically and in all instances when the Contractor anticipates that performance of the work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised Construction schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which (i) states and explains any modifications of the critical path schedule, including any changes in logic; (ii) defines problem areas and lists areas of anticipated delays; (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities; (iv) reports corrective action taken or proposed; and (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

16.2 Delay In Performance

If at any time the Contractor anticipates that performance of the work will be delayed or in fact has been delayed, the Contractor shall (i) within three (3) days notify the designated Professional in writing of the probable cause of and effect from the delay, and possible alternatives to minimize the delay; and (ii) take all corrective actions reasonably necessary to deliver the work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any. In the event that corrective action is necessary to overcome delays caused by Contractor, then Contractor shall not be entitled to compensation for such corrective action. In the event that corrective action is necessary to overcome delays caused by Owner or those for whom the Owner is responsible, then Contractor shall be entitled to an equitable adjustment for the reasonable costs of its corrective actions. In no event, however, shall Contractor be entitled to inefficiency costs arising from or related to such corrective action.

16.3 Modifications To Time For Performance

The Contractor shall determine and within seven (7) days of the circumstances giving rise to the claim,

notify the Owner and the Professional(s) in writing when it believes adjustments to the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any, are necessary, but no such adjustments shall be effective unless approved in writing by the Owner and Professional(s).

16.4 Early Completion

The Contractor may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the Contractor's sole convenience and shall not create any additional Contractor rights or Owner obligations under this Agreement, nor shall it change the required dates of Substantial Completion or Final Completion. The Owner shall not pay the Contractor any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the Owner owe the Contractor any compensation should the Owner cause the Contractor not to achieve substantial Completion earlier than the required date of Substantial Completion or Final Completion earlier than the required date of Final Completion.

16.5 Modification Dates of Substantial Completion or Final Completion

The Contractor may propose modifications to the required dates of Substantial completion or Final Completion. The Owner may, but is not required to, accept the Contractor's proposal. Modification(s) of the required dates of Substantial Completion or Final Completion shall be accomplished only by duly authorized and accepted change order(s) stating the new date (s) with specificity and reciting that all references in this Agreement to the required dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations, including the Contractor's liability for actual damages, delay damages and liquidated damages, shall be determined in relation to the date(s) as modified.

16.6 Document Review

The Contractor shall provide documents to the Owner and Professional(s) for review in accordance with schedule requirements and with sufficient lead-time to allow the Owner and Professional(s) reasonable time for review.

Article 17 - Liquidated Damages

17.1 Time Of The Essence

The parties hereto mutually understand and agree that time is of the essence in the performance of this Agreement and that the owner will incur damages if the Work is not completed on time. The Contractor shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that (i) the work progresses in accordance with the Construction Schedule; (ii) the Work is Substantially Completed by the required date of Substantial Completion; and (iii) the Work is Finally Complete by the date of Final Completion.

17.2 Failure To Timely Achieve Completion

The parties hereto mutually understand and agree that the Owner will sustain substantial monetary and other damages in the event of a failure or delay by the Contractor in the completion of the Work. If the Contractor inexcusably fails to achieve Substantial Completion by the required date of Substantial completion as established and previously set forth in this Agreement, the Contractor shall pay to the Owner, as liquidated damages for delay and not as a penalty, the daily amount of five hundred (\$500) dollars for each and every day after the required date of Substantial Completion until Substantial Completion is achieved. This liquidated damages provision shall apply and remain in full force and effect in the event that the Contractor is terminated by Owner for default and shall apply until Substantial Completion has been achieved by any completing contractor. If the Contractor fails to achieve Final Completion by the required date of Final Completion as established and previously set forth in this

Agreement, the Contractor shall pay to the Owner, as liquidated damages for delay and not as a penalty, one hundred (100) percent of the daily amount stated for failure to timely achieve Substantial Completion, even if not actually imposed, for each calendar day of unexcused delay in achieving Final Completion.

17.3 Compensable Delay

If the Contractor is delayed at anytime in the progress or performance of the work by (i) acts or omissions of the Owner or Professional(s); or (ii) major changes ordered by the Owner in the scope of Work, the Contractor shall give Owner and the Professional written notice within seven (7) days of the circumstances giving rise to the delay. The Construction Schedule shall be extended for the period of such delay and Contractor's compensation shall be equitably adjusted to cover the Contractor's actual and direct increased costs attributable to such delay, but in no event shall Contractor be entitled to compensation for indirect, home office, or offsite overhead attributable to such delay.

17.4 Excusable Delay

If the Contractor is delayed at any time in the progress or performance of the Work by (i) fire; (ii) unusual delays in transportation; (iii) unusually severe and adverse weather conditions not reasonably anticipated by the Contractor and as demonstrated by comparison to climatological data; (iv) unavoidable casualties; (v) causes beyond the Contractor's control which were not reasonably anticipatable, the Construction Schedule shall be extended for a period equal to the length of such delay, but only if (a) such delay is not in any way caused by default or collusion on the part of the Contractor or by any cause which the Contractor could reasonably control or circumvent; (b) the Contractor would have otherwise been able to timely perform all of its obligations under this Agreement but for such delay; and (c) immediately but not later than seven calendar days after the beginning of any such delay the Contractor gives written notice of its delay claim to the Owner. An extension of the Construction Schedule shall be Contractor's sole and exclusive remedy for such Excusable Delays. In no event shall Contractor be entitled to monetary compensation for Excusable Delays. Economic hardship or a shortage of craft labor shall not constitute the basis for an Excusable Delay.

17.5 Owner's Right To Withhold Payment

When it reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the Contractor will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay.

17.5.1 If and when the Contractor overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

17.5.2 Delay caused by labor disputes, picketing, employee boycotts, or the like which directly or indirectly involves employees of the Contractor or its subcontractors and suppliers is not the responsibility of the owner and will result in time extensions only if agreed to in writing by the Owner at the time such events arise.

Article 18 - Concealed and Unforeseen Conditions

18.1 Notification Regarding Unusual Conditions

If (i) the Contractor encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or (ii) the conditions vary from those indicated by the Construction Documents; and (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the Contractor, the Contractor shall promptly, but in no event later than three calendar days after first observance of the conditions, notify in writing the appropriate Professional(s) and the Owner before conditions are disturbed and give the Professional(s) or

the Owner opportunity to observe the condition in its undisturbed state.

18.1.1 The conditions will be promptly investigated and, if they differ substantially and cause a material increase or decrease in the Contractor's cost of, or time required for, performance of the Work, compensation or time for performance or both will be equitably adjusted.

18.1.2 All adjustments in compensation or extensions of time shall be by change order. Change order requests must be made within fourteen calendar days from the date of observation of the changed conditions.

18.1.3 The Contractor's failure to notify the Professional(s) and Owner as provided in this Article shall constitute a waiver of any claim arising out of or relating to such concealed or unknown condition.

Article 19 – Contractor's Records

19.1 Preparation Of Records

The Contractor shall, concurrently with performance of its services, prepare substantiating records regarding services rendered and goods furnished.

19.2 Retention Of Records

The Contractor shall retain in its records copies of all (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) change order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including by way of example overhead allocations, payroll records, time sheets, rental receipts, fixed asset records); and (xii) other documents such as plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings or things which document the Project, its design, its cost and its construction.

19.2.1 The Contractor shall maintain substantiating records for five years after the date of Final Completion or for any longer period of time as may be required by law or good construction practice. If the Contractor receives notification of a dispute or the commencement of litigation regarding the Project within this five-year period, the Contractor shall continue to maintain all Project records until final resolution of the dispute or litigation.

19.2.2 The Contractor shall, upon seven days request from the Owner, secure from its subcontractors and suppliers copies of (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) Change Order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including overhead allocations), and (xii) other documents generated with respect to the Project.

19.3 Access to Records

Upon the request of the Owner, the Contractor shall make its records available during normal business hours to the Owner, its authorized representative(s) or to any state, federal or other regulatory authority. Any such authority, the Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Contractors records at the copying party's reasonable expense, within adequate work

space at the Contractor's facilities. Failure by the Contractor to supply substantiating records from itself and its subcontractors and suppliers upon the request of the Owner shall be reason to exclude the related costs from amounts which might otherwise be payable by the Owner pursuant to this Agreement.

Article 20 - Proprietary Documents and Confidentiality

20.1 Nature And Use Of Information

All Information, documents, and electronic media furnished by the Owner to the Contractor (i) belong to the Owner; (ii) are proprietary and confidential; (iii) are furnished solely for use on the Owners Project; (iv) shall be kept confidential by the Contractor; and (v) shall not be used by the Contractor on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the owner hereunder is specifically authorized in writing by the Owner in advance. The Owner hereby grants to the Contractor a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.

20.2 Ownership Of Information

All Information, documents, and electronic media prepared by or on behalf of the Contractor for the Project are the sole property of the Owner free of any retention rights of the Contractor. The Contractor hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, any information documents or electronic media prepared by or on behalf of the Contractor for the project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.

20.3 Disclosure Of Information

The Contractor shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under this Agreement.

20.3 Instructions To Employees

Because it is difficult to separate proprietary and confidential information from that which is not, the Contractor shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential.

20.4 Non-Publication

Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

Article 21 - General Insurance Requirements

21.1 General Insurance Requirements

Unless otherwise required, each insurance policy:

- (i) shall be issued by an insurance carrier acceptable to the Owner;
- (ii) shall be kept in force throughout performance of the Contractor's services and for one year after the end of such performance;
- (iii) shall be an occurrence policy; and
- (iv) shall be evidenced by a certificate of insurance acceptable to the Owner which provides that the

coverage evidenced thereby shall not be substantially modified or canceled without thirty (30) days' prior written notice to the Owner.

21.2 Certificates Of Insurance

Prior to performance of services on the Project, the Contractor shall (i) have all required insurance coverage in effect; and (ii) deliver to the Owner certificates of insurance for all its required minimum insurance coverage. The Contractor shall (i) require that its subcontractors and suppliers have similar coverage in effect, and prior to the performance of any services on the Project by the Contractor's subcontractors and suppliers, and (ii) shall ensure that all required insurance coverages of its subcontractors and suppliers are in effect. The Owner shall have no responsibility to verify compliance by the Contractor or its subcontractors and suppliers. Upon the request of the Owner, the Contractor shall provide copies of policies for all required insurance coverage.

21.3 Effect Of Insurance

Compliance with insurance requirements shall not relieve the Contractor of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of this Agreement and the Owner shall be entitled to pursue any remedy in law or equity if the Contractor fails to comply with the contractual provisions of this Agreement. Indemnity obligations specified elsewhere in this Agreement shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

21.4 Waiver Of Subrogation

The Contractor hereby releases and discharges the Owner and the Owner's Related Parties of and from all liability to the Contractor, and to anyone claiming by, through or under the Contractor, by subrogation, or otherwise, on account of any loss or damage to tools, machinery, equipment or other property, however caused.

Article 22 - General Bond Requirements

22.1 General Bond Requirements

If the Contractor is required to provide performance and payment bond(s), the penal sum of each bond shall be in an amount not less than the Construction Price, as adjusted by any change order(s), and each bond shall:

- (i) be in a form approved by the Owner and in compliance with applicable law;
- (ii) incorporate by reference the terms of this Agreement;
- (iii) be executed by a company certified by the secretary of the United States Department of Treasury pursuant to the Act of July 30, 1947 (61 Stat 646, as amended; 6 U.S.C. 6-13);
- (iv) be executed by a company licensed and authorized to do business in the state of Florida; and
- (v) be accompanied by a power of attorney certifying that the person(s) executing the bond have the authority to do so.

22.2 Delivery Of Bonds

The Contractor shall deliver any required bond(s) and power(s) of attorney to the Owner prior to commencement of the Work.

Article 23 – Owner’s Right to Stop Work

23.1 Cease And Desist Order

If the Contractor fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the work in accordance with the Agreement, the Owner may, by written notice, order the Contractor to cease and desist in performing the work or any portion of the Work until the cause for the order has been eliminated to the satisfaction of the Owner. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the owner's order has been corrected, no longer exists, or the Owner instructs that the Work may resume.

23.1.1 The Contractor shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause since such stoppages are considered to be the fault of the Contractor.

23.1.2 The right of the Owner to stop work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or others.

23.1.3 In the event the Owner issues instructions to cease and desist, and in the further event that the Contractor fails and refuses with seven calendar days to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another Contractor, and the Contractor shall be responsible for the cost of performing such Work by the owner.

23.1.4 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

Article 24 - Termination or Suspension of Agreement

24.1 Termination For Cause By Owner

24.1.1 The Owner may terminate this Agreement for cause if the Contractor materially breaches this Agreement by:

- (i) refusing, failing or being unable to properly manage or perform on any Project;
- (ii) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials, or maintain applicable schedules;
- (iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
- (iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;
- (v) refusing, failing or being unable to substantially perform in accordance with the Agreement as determined by the Owner, or as otherwise defined elsewhere herein, or
- (vi) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and Contractor;
- (vi) failing to maintain all required insurance policies and bonds during any time the Agreement is being performed.

24.1.2 Upon the occurrence of any of the events described in Paragraph 24.1.1, the Owner may give written notice to the Contractor setting forth the nature of the default and requesting cure within

seven calendar days from the date of notice. At any time thereafter, if the Contractor fails to initiate the cure or if the Contractor fails to expeditiously continue such cure until complete, the Owner may give written notice to the Contractor of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

- (i) complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- (ii) contract with others to complete all or any part of the work, including supplying workers, material and equipment which the Owner deems expedient to complete the work;
- (iii) take such other action as is necessary to correct such failure;
- (vi) take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Contractor;
- (v) directly pay the Contractor's subcontractors and suppliers compensation due to them from the Contractor;
- (vii) finish the Work by whatever method the Owner may deem expedient; and
- (viii) require the Contractor to assign the Contractor's right title and interest in any or all of Contractor's subcontracts or orders to the Owner.

24.1.3 If the Owner terminates the Agreement for cause, and the Owner takes possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Contractor, the Contractor's compensation shall be increased by fair payment either by purchase or rental at the election of the Owner, for any materials, tools, construction equipment and machinery items retained, subject to the Owner's right to recover from the Contractor the Owner's damages resulting from the termination.

24.1.4 If the Owner terminates this Agreement for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event said termination shall be deemed a termination for convenience as set forth in paragraph 24.3.

24.2 Termination For Cause By Contractor

24.2.1 The Contractor may terminate this Agreement for cause if the Owner materially breaches this Project Agreement by:

- (i) refusing, failing or being unable to make prompt payment to the Contractor without just cause;
- (ii) disregarding laws, ordinances, rules, regulations or orders of any public authority of quasi-public authority having jurisdiction over any Project; or
- (iii) refusing or failing or being unable to substantially perform in accordance with the terms of this Agreement.

24.2.2 Upon the occurrence of any of the events described in Paragraph 24.2.1, the Contractor may give written notice to the Owner setting forth the nature of the default and requesting cure within seven calendar days from the date of notice, if the Owner fails to cure the default within seven calendar days, the Contractor, without prejudice to any rights or remedies, may give written notice to the Owner of immediate termination.

24.3 Termination Or Suspension For Convenience

The Owner may at any time give written notice to the Contractor terminating this Agreement or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the Contractor shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.

24.4 Contractor's Compensation When Contractor Terminates For Cause or Owner Terminates For Convenience

If this Construction Agreement is (i) terminated by the Contractor pursuant to Paragraph 24.2; (ii) terminated by the Owner pursuant to Paragraph 24.3; or (iii) suspended more than three months by the Owner pursuant to Paragraph 24.3, the Owner shall pay the Contractor specified amounts due for work actually performed prior to the effective termination date and reasonable costs associated with termination. The Owner may agree to additional compensation, if any, due to the Contractor. Absent agreement on the additional amount due the Contractor, the Owner shall pay the Contractor:

- (i) reasonable costs incurred in preparing to perform the terminated portion of the work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit on work not performed or consequential damages); provided, however, that if it appears that the Contractor would not have profited or would have sustained a loss if the work had been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rates of loss, if any; and
- (ii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or supplier orders. These costs shall not include attorneys fees and amounts paid in accordance with other provisions hereof.

24.5 Contractor's Compensation When Owner Terminates For Cause

If this Agreement is terminated by the Owner for cause pursuant to Paragraph 24.1, no further payment shall be made to the Contractor until Final Completion of the Project. At such time, the Contractor shall be paid the remainder of the construction Price less all costs and damages incurred by the Owner as a result of the default of the Contractor, including liquidated damages, remediation completion expenses and damages applicable thereto. The Contractor shall additionally reimburse the Owner for any additional costs or expenses incurred.

24.6.1 Limitation On Termination Compensation

Regardless of the reason for termination or the party terminating, the total sum paid to the Contractor shall not exceed the Contract Construction Price, as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of this Agreement, and shall in no event include duplication of payment.

24.7 Contractor's Responsibility upon Termination

Regardless of the reason for termination or the party terminating, if this Agreement is terminated, the Contractor shall, unless notified otherwise by the owner,

- (i) immediately stop work;
- (ii) terminate outstanding orders and subcontracts;
- (iii) settle the liabilities and claims arising out of the termination of subcontracts and orders; and
- (iv) transfer title and deliver to the Owner such completed or partially completed work, and, if paid for by the Owner, materials, equipment, parts, fixtures, information and such contract rights as the

Contractor has.

Article 25 - Applicable Law and Dispute Resolution

25.1 Applicable State Law

This Agreement shall be deemed to be entered into in and shall be interpreted under the laws of the state in which the Project is located.

25.2 Court Actions

Except as expressly prohibited by law:

- (i) all legal actions hereunder shall be conducted only in state court or federal court districts where the Project is located and having subject matter jurisdiction over the matter in controversy; except that any final judgment may be enforced in other jurisdictions in any manner provided by law;
- (ii) the choice of jurisdiction and venue described in the preceding paragraph shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction or venue other than that specified herein;
- (iii) the parties waive any right to assert the doctrine of forum non conveniens or to object to venue; and
- (iv) the parties unequivocally waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.

25.3 Mutual Discussion

In case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Agreement or the breach thereof, the parties shall first attempt resolution through mutual discussion.

25.4 Mediation

If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Agreement or the breach thereof through mutual discussion, as a condition precedent to any litigation, the parties shall in good faith participate in private, non-binding mediation seeking a just and equitable solution satisfactory to all parties.

25.4.1 All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.

25.4.2 The parties shall not be required to mediate for a period greater than ninety-one calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for their own expenses otherwise incurred.

25.4.3 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.

25.4.4 During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.

25.4.5 The Owner, the Professional(s), the Contractor, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to

mediate prior to commencement of any litigation, provided that they have signed this Agreement or an agreement that incorporates this Agreement by reference or signed any other agreement which binds them to mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement, in the case where more than one mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.

25.5 Conflicting Dispute Resolution Provisions

Neither party to this Agreement shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.

25.6 Arbitration Preclusion

In case of a dispute relating to the Project, or arising out of this Agreement, no party to this Project Agreement shall be required to participate in or be bound by, any arbitration proceedings.

25.7 Performance During Dispute Resolution

The Owner and the Contractor agree that pending the resolution of any dispute, controversy, or question, the Owner and the Contractor shall each continue to perform their respective obligations without interruption or delay, and the Contractor shall not stop or delay the performance of the work.

Article 26 - Damages and Remedies

26.1 Contractor's Repair

The Contractor shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Agreement, or any other applicable warranty or guarantee.

26.2 Contractor's Reimbursement

The Contractor shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (i) the Contractor's failure to substantially perform in accordance with the terms of this Agreement; (ii) deficiencies or conflicts in the Construction Documents attributable to the Contractor or of which the Contractor was or should have been aware; (iii) breach of the warranties and guarantees set forth in this Agreement or any other applicable warranty or guarantee; or (iv) other acts or omissions of the Contractor.

26.3 General Indemnity

To the fullest extent permitted by law the Contractor shall secure, defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, and regardless of the legal theories upon which premised, including, but not limited to, those actually or allegedly arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against the Owner or the Owner's Related Parties allegedly or actually arising out of or resulting from the Contractor's services, including without limitation any breach of contract or negligent act or omission or willful misconduct (i) of the Contractor; or (ii) of the Contractor's subcontractors or suppliers, or (iii) of the agents, employees or servants of the Contractor or

its subcontractors or suppliers.

26.3.1 To the fullest extent permitted by law, the Contractor, for itself and for its subcontractors and suppliers, and the respective agents, employees and servants of each, expressly waives any and all immunity or damage limitation provisions available to any agent, employee or servant under any workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts, to the extent such statutory or case law would otherwise limit the amount recoverable by the Owner or the Owners Related Parties pursuant to the indemnification provision contained in the paragraph above.

26.4 Intellectual Property Indemnity

To the fullest extent permitted by law, the Contractor shall defend, protect hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or professional(s) in writing. If the Contractor has reason to believe the use of a required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly given to the Owner.

26.5 Non-Exclusivity Of Owners Remedies

The Owner's selection of one or more remedies for breach of this Agreement contained herein shall not limit the Owner's right to invoke any other remedy available to the owner under this Agreement or by law.

26.6 Waiver Of Damages

Contractor and Owner shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, indirect, lost profits, incidental, lost business opportunities, unabsorbed overhead, punitive, or any consequential damages of whatever nature each may have against the other.

26.7 Interest

The Owner is entitled to interest on all amounts due from the Contractor that remain unpaid thirty days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise. Any such interest shall be calculated by the same method as set forth in Paragraph 15.8.

Article 27 - Miscellaneous Provisions

27.1 Integration

This Agreement represents the entire and integrated agreement between the Owner and the Contractor, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. Agreement may be amended only by written instruments signed by both the Owner and the Contractor, and is subject to such reasonable modifications as may be required by the Owner's lender(s) or insurer(s), if any.

27.2 Severability

If any provision of this Agreement, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.

27.3 Waiver

No provision of this Agreement may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion,

unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Agreement.

27.4.1 Strict Compliance

No failure of the owner to insist upon strict compliance by the Contractor with any provision of this Agreement shall operate to release, discharge, modify, change or affect any of the Contractor's obligations.

27.5 No Third-Party Beneficiaries

This shall inure solely to the benefit of the parties hereto and their successors and assigns. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Contractor.

27.5.1 Survival

All provisions of this Agreement, which contain continuing obligations, shall survive its expiration or termination.

27.5.2 Assignment

Except as prohibited by applicable law, neither party shall assign any or all of its benefits or executory obligations under this Agreement without the approval of the other party, except in case of assignment solely for security or assignment by the Owner to a Related Party of the Owner, or except as otherwise specifically provided for in this Agreement in case of default. The Owner and the Contractor bind their successors and assigns to the other party to this Agreement.

END OF SECTION

ADDITIONAL SUPPLEMENTAL TERMS AND CONDITIONS

WITNESSETH:

(1) The CONTRACTOR hereby warrants and represents to the OWNER that it is competent and otherwise able to provide professional and high quality goods and/or services to the OWNER by means of employees who are neat in appearance and of polite demeanor.

(2) The CONTRACTOR acknowledges that the OWNER may retain other goods and/or service providers to provide the same goods and/or services for OWNER projects. The CONTRACTOR acknowledges that the OWNER, at the OWNER's option, may request proposals from the CONTRACTOR and the other goods and/or service providers for OWNER projects. The OWNER reserves the right to select which goods and/or services provider shall provide goods and/or services for the OWNER's projects.

(3) Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it. The person(s) executing this Agreement for the CONTRACTOR certify that he/she/they is/are authorized to bind the CONTRACTOR fully to the terms of this Agreement,

(4) The CONTRACTOR hereby guarantees the OWNER that all materials, supplies, services and equipment as listed on a Purchase Order meet the requirements, specifications and standards as provided for under the *Federal Occupations Safety and Health Act of 1970*, from time to time amended and in force on the date hereof.

(5) It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties, or as constituting the CONTRACTOR (including, but not limited to, its officers, employees, and agents) the agent, representative, or employee of the OWNER for any purpose, or in any manner, whatsoever. The CONTRACTOR is to be and shall remain forever an independent contractor with respect to all services performed under this Agreement.

(6) Persons employed by the CONTRACTOR in the provision and performance of the goods and/or services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the OWNER'S officers and employees either by operation of law or by the OWNER.

(7) No claim for goods and/or services furnished by the CONTRACTOR not specifically provided for herein shall be honored by the OWNER.

(8) Execution of this Agreement by the CONTRACTOR is a representation that the CONTRACTOR is familiar with the goods and/or services to be provided and/or performed and with local conditions. The CONTRACTOR shall make no claim for additional time or money based upon its failure to comply with this Agreement. The CONTRACTOR has informed the OWNER, and hereby represents to the OWNER, that it has extensive experience in performing and providing the services and/or goods described in this Agreement and that it is well acquainted with the components that are properly and customarily included within such projects and the requirements of laws, ordinance, rules, regulations or orders of any public authority or licensing entity having jurisdiction over the OWNER'S Projects.

(9) The CONTRACTOR shall be responsible for the professional quality, accepted standards, technical accuracy, neatness of appearance of employees, employee conduct, and the coordination of all goods and/or services furnished by the CONTRACTOR under this Agreement as well as the conduct of its staff, personnel, employees and agents. The CONTRACTOR shall work closely with the OWNER on all aspects of the provision of the goods and/or services. With respect to services, the CONTRACTOR shall be responsible for the professional quality, technical accuracy, competence, methodology, accuracy and the coordination of all of the following which are listed for illustration purposes and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by the CONTRACTOR under this Agreement.

(10) Neither the OWNER'S review, approval or acceptance of, nor payment for, any of the goods and/or services required shall be construed to operate as a waiver of any rights under this Agreement or of any cause

of action arising out of the performance of this Agreement and the CONTRACTOR shall be and remain liable to the OWNER in accordance with applicable law for all damages to the OWNER caused by the CONTRACTOR negligent or improper performance or failure to perform any of the goods and/or services furnished under this Agreement.

(11) The rights and remedies of the OWNER, provided for under this Agreement, are in addition to any other rights and remedies provided by law.

(12) The OWNER and the CONTRACTOR will make every effort to resolve all disputable items contained in the CONTRACTOR'S invoices.

(13) Each invoice shall reference this Agreement, the appropriate billing period.

(14) The *Florida Prompt Payment Act* shall apply when applicable. A billing period represents the dates in which the CONTRACTOR completed goods and/or services referenced in an invoice.

(15) Invoices are to be forwarded directly to:

**Sun 'n Lake of Sebring Improvement District
5306 Sun 'n Lake Blvd.
Sebring, Florida 33872**

(16) OWNER designates the OWNER, Manager or his/her designated representative, to represent the OWNER in all matters pertaining to and arising from the work and the performance of this Agreement.

(17) The OWNER, Manager, or his/her designated representative, shall have the following responsibilities:

(a) Examination of all work and rendering, in writing, decisions indicating the OWNER'S approval or disapproval within a reasonable time so as not to materially delay the work of the CONTRACTOR;

(b) Transmission of instructions, receipt of information, and interpretation and definition of OWNER'S policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement;

(c) Giving prompt written notice to the CONTRACTOR whenever the OWNER official representative knows of a defect or change necessary in the project; and

(d) Coordinating and managing the CONTRACTOR'S preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.

(18) Until further notice from the OWNER or Manager, the designated representative for this Agreement shall be as defined by City staff at the preconstruction meeting for this project.

(19) The performance or provision of the CONTRACTOR'S goods and/or services under this Agreement may be suspended by the OWNER at any time.

(20) Upon receipt of written notice from the OWNER that the CONTRACTOR'S provision of goods and/or services hereunder are to be resumed, the CONTRACTOR shall continue to provide the services to the OWNER.

(21) The CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or their forms or compensation; and selection for training, including apprenticeship. The CONTRACTOR, moreover, shall comply with all the requirements as imposed by the *Americans with Disability Act*,

the regulations of the Federal government issued thereunder, and any and all requirements of Federal or State law related thereto.

(22) Nothing herein shall be deemed to affect the rights, privileges, and immunities of the OWNER as set forth in Section 768.28, *Florida Statutes*.

(23) In claims against any person or entity indemnified under this Section by an employee of the CONTRACTOR or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or its agents or subcontractors, under Workers Compensation acts, disability benefits acts, or other employee benefit acts.

(24) The execution of this Agreement by the CONTRACTOR shall obligate the CONTRACTOR to comply with the indemnification provision in this Agreement; provided, however, that the CONTRACTOR must also comply with the provisions of this Agreement relating to insurance coverages.

(25) The CONTRACTOR shall obtain or possess and continuously maintain the insurance coverage as set forth and required in the bid documents.

(26) All insurance other than Workers Compensation and Professional Liability that must be maintained by the CONTRACTOR shall specifically include the OWNER as an additional insured.

(27) The CONTRACTOR shall provide Certificates of Insurance to the OWNER evidencing that all such insurance is in effect prior to the issuance of the first Purchase/Work Order under this Agreement from the OWNER. These Certificates of Insurance shall become part of this Agreement. Neither approval by the OWNER nor failure to disapprove the insurance furnished by a CONTRACTOR shall relieve the CONTRACTOR of the CONTRACTOR'S full responsibility for performance of any obligation including the CONTRACTOR'S indemnification of the OWNER under this Agreement. If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: (1) lose its Certificate of Authority, (2) no longer comply with Section 440.57, *Florida Statutes*, or (3) fail to maintain the requisite Bests Rating and Financial Size Category, the CONTRACTOR shall, as soon as the CONTRACTOR has knowledge of any such circumstance, immediately notify the OWNER and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as the CONTRACTOR has replaced the unacceptable insurer with insurance acceptable to the OWNER, the CONTRACTOR shall be deemed to be in default of this Agreement.

(28) The insurance coverage shall contain a provision that requires that prior to any changes in the coverage, except increases in aggregate coverage, thirty (30) days prior notice will be given to the OWNER by submission of a new Certificate of Insurance,

(29) The CONTRACTOR shall furnish Certificates of Insurance directly to the OWNER=s Designated Representative. The certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount and classification required by this Agreement.

(30) Nothing in this Agreement or any action relating to this Agreement shall be construed as the OWNER'S waiver of sovereign immunity beyond the limits set forth in Section 768.28, *Florida Statutes*.

(31) The OWNER shall not be obligated or liable under the terms of this Agreement to any party other than the CONTRACTOR. There are no third party beneficiaries to this Agreement,

(32) The CONTRACTOR is an independent contractor and not an agent, representative, or employee of the OWNER. The OWNER shall have no liability except as specifically provided in this Agreement.

(33) All insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by the OWNER.

(34) The CONTRACTOR warrants that it has not employed or retained any company or person, other than a *bona fide* employee working solely for the CONTRACTOR, to solicit or secure this Agreement and that the CONTRACTOR has not paid or agreed to pay any person, company, corporation, individual or firm other than a *bona fide* employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of making this Agreement.

(35) The CONTRACTOR shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement or violate any laws pertaining to civil rights, equal protection or discrimination.

(36) The CONTRACTOR hereby certifies that no undisclosed (in writing) conflict of interest exists with respect to the Agreement, including, but not limited to, any conflicts that may be due to representation of other clients, customers or vendees, other contractual relationships of the CONTRACTOR, or any interest in property that the CONTRACTOR may have. The CONTRACTOR further certifies that any conflict of interest that arises during the term of this Agreement shall be immediately disclosed in writing to the OWNER. Violation of this Section shall be considered as justification for immediate termination of this Agreement.

(37) The CONTRACTOR shall ensure that all taxes due from the CONTRACTOR are paid in a timely and complete manner including, but not limited to, occupational license tax.

(38) If the OWNER determines that any employee or representative of the CONTRACTOR is not satisfactorily performing his/her assigned duties or is demonstrating improper conduct pursuant to any assignment or work performed under this Agreement, the OWNER shall so notify the CONTRACTOR, in writing. The CONTRACTOR shall immediately remove such employee or representative of the CONTRACTOR from such assignment.

(39) The CONTRACTOR shall not publish any documents or release information regarding this Agreement to the media without prior approval of the OWNER.

(40) The CONTRACTOR shall certify, upon request by the OWNER, that the CONTRACTOR maintains a drug free workplace policy in accordance with Section 287.0878, *Florida Statutes*. Failure to submit this certification may result in termination.

(41) If the CONTRACTOR or an affiliate is placed on the convicted vendor list following a conviction for a public entity crime, such action may result in termination by the OWNER. The CONTRACTOR shall provide a certification of compliance regarding the public crime requirements set forth in State law upon request by the OWNER.

(42) The OWNER reserves the right to unilaterally terminate this Agreement if the CONTRACTOR refuses to allow public access to all documents, papers, letters, or other materials subject to provisions of *Chapter 119, Florida Statutes*, and other applicable law, and made or received by the CONTRACTOR in conjunction, in any way, with this Agreement

(43) The CONTRACTOR shall comply with the requirements of the *Americans with Disabilities Act* (ADA), and any and all related Federal or State laws which prohibits discrimination by public and private entities on the basis of disability.

(44) The OWNER will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) Section 274A(e) of the *immigration and Nationally Act (INA)*. The OWNER shall consider the employment by the CONTRACTOR of unauthorized aliens, a violation of Section 274A(e) of the *INA*. Such violation by the CONTRACTOR of the employment provisions contained in Section 274A(e) of the *INA* shall be grounds for immediate termination of this Agreement by the OWNER.

(45) The CONTRACTOR agrees to comply with Federal, State, and local environmental, health, and safety laws and regulations applicable to the goods and/or services provided to the OWNER. The CONTRACTOR agrees that any program or initiative involving the work that could adversely affect any personnel involved, citizens, residents, users, neighbors or the surrounding environment will ensure compliance with any and all employment safety, environmental and health laws.

(46) The CONTRACTOR shall ensure that all goods and/or services are provided to the OWNER after the CONTRACTOR has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, approvals or similar consents,

(47) If applicable, in accordance with Section 216.347, *Florida Statutes*, the CONTRACTOR shall not use funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or State agency.

(48) The CONTRACTOR shall advise the OWNER in writing if it has been placed on a discriminatory vendor list, may not submit a bid on a contract to provide goods or services to a public entity, or may not transact business with any public entity.

(49) The CONTRACTOR shall not engage in any action that would create a conflict of interest in the performance of that actions of any OWNER employee or other person during the course of performance of, or otherwise related to, this Agreement or which would violate or cause others to violate the provisions of Part III, Chapter 112, *Florida Statutes*, relating to ethics in government.

(50) The OWNER may perform, or cause to have performed, an audit of the records of the CONTRACTOR before or after final payment to support final payment under any Purchase/Work Order issued hereunder. This audit shall be performed at a time mutually agreeable to the CONTRACTOR and the OWNER subsequent to the close of the final fiscal period in which goods and/or services are provided or performed. Total compensation to the CONTRACTOR may be determined subsequent to an audit as provided for in this Section, and the total compensation so determined shall be used to calculate final payment to the CONTRACTOR. Conduct of this audit shall not delay final payment as required by this Section.

(51) In addition to the above, if Federal, State, County, or other entity funds are used for any goods and/or services under this Agreement, the Comptroller General of the United States or the Chief Financial Officer of the State of Florida, or the County of Seminole, or any representatives, shall have access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to goods and/or services provided or performed under this Agreement for purposes of making audit, examination, excerpts, and transcriptions.

(52) In the event of any audit or inspection conducted revealing any overpayment by the OWNER under the terms of the Agreement, the CONTRACTOR shall refund such overpayment to the OWNER within thirty (30) days of notice by the OWNER of the request for the refund.

(53) The CONTRACTOR agrees to fully comply with all State laws relating to public records.

(54) The CONTRACTOR agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(55) The CONTRACTOR shall not sublet, assign or transfer any interest in this Agreement, or claims for the money due or to become due out of this Agreement to a bank, trust company, or other financial institution without written OWNER approval. When approved by the OWNER, written notice of such assignment or transfer shall be furnished promptly to the OWNER.

(56) Any CONTRACTOR proposed subcontractors shall be submitted to the OWNER for written approval prior to the CONTRACTOR entering into a subcontract. Subcontractor information shall include, but not be limited to, State registrations, business address, occupational license tax proof of payment, and insurance certifications.

(57) The CONTRACTOR shall coordinate the provision of goods and/or services and work product of any OWNER approved subcontractors, and remain fully responsible for such goods and/or services and work under the terms of this Agreement

(58) This Agreement is the result of *bona fide* arms length negotiations between the OWNER and the CONTRACTOR and all parties have contributed substantially and materially to the preparation of the Contract. Accordingly, this Agreement shall not be construed or interpreted more strictly against any one party than against any other party.

(59) Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties.

(60) In no event shall any obligation of the OWNER under this Agreement be or constitute a general obligation or Indebtedness of the OWNER, a pledge of the *ad valorem* taxing power of the OWNER or a general obligation or indebtedness of the OWNER within the meaning of the *Constitution of the State of Florida* or any other applicable laws, but shall be payable solely from legally available revenues and funds.

(61) The CONTRACTOR shall not have the right to compel the exercise of the *ad valorem* taxing power of the OWNER.

(62) Each exhibit referred to and attached to this Agreement is an essential part of this Agreement. The exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement.

(63) The Section headings and captions of this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any provision of this Agreement.

(64) If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.

(65) All provisions of this Agreement shall be read and applied in *para materia* with all other provisions hereof.

(66) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust any alternative dispute resolution procedures reasonably imposed by the City prior to filing suit or otherwise pursuing legal remedies.

(67) The CONTRACTOR agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration to the OWNER in alternative dispute resolution procedures or which the CONTRACTOR had knowledge and failed to present during the OWNER procedures.

(68) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

SAMPLE AGREEMENT FORM

1. GENERAL

1.01 THIS AGREEMENT, made this _____ day of _____, 2014, by and between (1) Sun 'n Lake of Sebring, Florida, hereinafter called the Owner, and (2) _____ doing business as a (3) _____, and hereinafter called the Contractor.

- (1) Owner
- (2) Contractor
- (3) Sole Proprietor, Partnership, or Corporation

1.02 The Owner and Contractor agree as follows:

A. Contract Documents

The Contract Documents consist of this Agreement; all Technical, General, and Supplementary Conditions and Sections contained in the Project Manual; the Drawings as listed on the Bid Form and Index to Drawings; all Addenda issued prior to and all Change Orders issued after execution of this Agreement. These form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

B. Scope of Work

The Contractor shall perform all work required by the Contract Documents for the construction of the Sun 'n Lake of Sebring Improvement District BID # 14-01 Waterline Interconnection .

C. Contract Time

The Contractor shall begin design work within fourteen (14) calendar days after the issuance of a written Notice to Proceed and shall complete the work within stipulated consecutive calendar days of date of the Notice to Proceed as follows.

- 1. Shop submittals shall be submitted for approval within 30 days of execution of this contract.
- 2. Contractor shall complete construction and testing of all products prior to according to the schedule below unless approved in advance by Owner.
 - a. Substantial Completion date shall be April 17, 2014
 - b. Final Completion Date shall be May 1, 2014

D. Liquidated Damages

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in Paragraph C above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving in a legal arbitration preceding the actual loss suffered by OWNER if the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay, (but not as a penalty), CONTRACTOR shall pay OWNER **\$500 FOR SUBSTANTIAL COMPLETION** for each day that expires beyond the individual times specified in Paragraph C above for Substantial Completion and **\$500 FOR FINAL COMPLETION** expires beyond the time specified in Paragraph C above for Final Completion (readiness for final payment).

E. Contract Price

Lump Sum Contract

The Owner will pay the Contractor in current funds for the performance of the work, subject to additions and deductions by Change Order; the Total Contract Price of: _____ Dollars (\$ _____). Payments will be made to the Vendor on the basis of the Schedule of Values included as a part of his Bid, which shall be as fully a part of the Contract as if attached or repeated herein.

F. Payments

Payment terms and conditions will be negotiated with the successful bidder. Standard industry accepted payment practices will be followed.

G. Engineer

The Project shall be directed by the District Engineer, or his representative. Polston Engineering, referred to in the documents as the District Engineer, whose authority during the progress of construction is defined in the General Conditions and Supplementary Conditions.

H. Unauthorized Alien Workers

The Sun 'n Lake of Sebring Improvement District will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA"). The District shall consider the employment by a contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(3) of the INA shall be grounds for unilateral cancellation of this Agreement by the District.

Employment Eligibility Verification

(a) *Definitions.* As used in this paragraph

Employee assigned to this Contract means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under this Contract. An employee is not considered to be directly performing work under this Contract if the employee—

- (1) Normally performs support work, such as indirect or overhead functions; and
- (2) Does not perform any substantial duties applicable to the contract.

Subcontract means any contract entered into by a subcontractor to furnish supplies or services for performance of this Contract or a subcontract under this Contract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for Contractor or another subcontractor.

United States, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.*

(1) The Contractor must be enrolled in E-Verify at time of contract award, and the Contractor shall use E-Verify to initiate verification of employment eligibility of—

- (i) *All new employees.*

(A) *Enrolled 30 calendar days or more.* The Contractor shall initiate verification of employment eligibility of all new hires of the Contractor, who are working in the State of Florida, whether or not assigned to this Contract, within 3 business days after the date of hire; or

(B) *Enrolled less than 30 calendar days.* Within 30 calendar days after enrollment in E-Verify, the Contractor shall initiate verification of employment eligibility of all new hires of the Contractor who are working in the State of Florida, whether or not assigned to this Contract, within 3 business days after the date of hire.

(ii) *Employees assigned to this Contract.* For each employee assigned to this Contract, the Contractor shall initiate verification of employment eligibility, to the extent allowed by the E-Verify program, within 30 calendar days after date of contract award or within 30 days after assignment to this Contract, whichever date is later.

(2) The Contractor shall comply, for the period of performance of this Contract, with the requirements of the E-Verify program MOU. Termination of the Contractor's MOU and denial of access to the E-Verify system by the Department of Homeland Security or the Social Security Administration or the U.S. Citizenship and Immigration Service is an event of default under this Contract.

(c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the U.S. Citizenship and Immigration Service's Web site: <http://www.uscis.gov>.

(d) *Individuals previously verified.* The Contractor is not required by this paragraph to perform additional employment verification using E-Verify for any employee whose employment eligibility was previously verified by the Contractor through the E-Verify program.

(e) *Subcontracts.* The Contractor shall include, and shall require the inclusion of, the requirements of this paragraph, including this subparagraph (e) (appropriately modified for identification of the parties), in each subcontract that includes work performed in the United States under this Contract.

I. PUBLIC RECORDS PROVISIONS

Contractor is aware that this Agreement is a contract for services with a public agency and, in performing the Work under this Agreement, Contractor is acting on behalf of the public agency as provided under section 119.011(2), Florida Statutes. Pursuant to Fla. Stat. 119.0701, Contractor, and its Subcontractors, shall comply with all pertinent public records laws of Chapter 119, Florida Statutes, and specifically:

(a) keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; and

(b) provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; and

(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; and

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

Contractor's failure to comply with this section shall be deemed a breach of the Agreement.

Contractor shall be responsible for insuring that all Subcontractors under its control comply with this section. By executing this Agreement, Contractor certifies that it is familiar with the public records requirements contained in Chapter 119, Florida Statutes.

1.03
above written.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first

VENDOR:

Name of Firm

By (Signature and Title)

Seal

ATTEST:

Signature

Seal

OWNER:

Sun 'n Lake of Sebring Improvement District, Florida

By (Signature and Title)

Seal

ATTEST:

Signature

Seal

END OF SECTION