

**AGREEMENT FOR INSPECTIONS, MAINTENANCE AND INFRASTRUCTURE UPGRADES
Between**

VILLAGE OF WELLINGTON, FLORIDA

And

CROM COATINGS AND RESTORATION

THIS AGREEMENT between CROM Coatings and Restorations, a Division of CROM, LLC ("CCR" / "Contractor"), and the Village of Wellington, a Florida municipal corporation ("Client"), each a "Party" and collectively referred to as the "Parties", is entered into this ____ day of _____, 2026. CCR agrees to provide the necessary labor, materials, and equipment to perform inspections, preventative maintenance, corrective maintenance, and upgrades on infrastructure asset structures ("structures") for Client pursuant to the terms set forth herein and in accordance with applicable codes and standards, including OSHA, AWWA, and ACI.

1. DRAWINGS, SPECIFICATIONS, AND OTHER REQUIRED DATA

The Client or a duly authorized representative is responsible for providing CCR with a clear understanding of the project nature and scope as is reasonably known to the Client. The Client shall supply CCR with sufficient and adequate information, including, but not limited to, maps, site plans, reports, surveys, and designs, to allow CCR to properly complete the specified services. The Client shall also communicate changes in the nature and scope of the project as soon as possible during performance of the work so that the changes can be incorporated into the work product.

Prior to starting work, CCR will request from Client data reasonably required for submittal purposes to provide necessary labor, materials, and equipment to perform inspections, preventative maintenance corrective maintenance, repair, modification, coatings or upgrades on structures for the Client, including any available computations, detailed drawings, and specifications. If, in the opinion of CCR, adequate data is not available or is incomplete, Client will be informed and arrangements made for creation of needed data.

2. TERMS

The term of this Agreement shall commence immediately upon execution by both the Client and CCR and shall continue for a period of three (3) years. This Agreement may be renewed for up to two additional one-year periods subject to written approval of both parties.

Any mutually agreed upon renewal shall allow for price adjustments for labor rates in an amount equal to the percentage change of the Employment Cost Index: Wages and salaries for Private Industry Workers in Construction, Series ID: CIU20223000000001, with the beginning index value being the index value from the same quarter as the effective date of this agreement and the ending index value being the most recently published index value as of the effective date of the term renewal. Any mutually agreed upon renewal shall be exercised only if all terms and conditions remain the same, or any changes are mutually agreed upon in writing by the Parties.

3. COMMENCEMENT AND COMPLETION

Upon execution of this Agreement, CCR will be prepared to start work within **30 days** following approval of our submittal information. CCR shall furnish sufficient labor, materials, and equipment necessary to complete the work for each applicable work order. The estimated project duration shall be specified in each individual line item work order and Scope of Work. The Client will issue approval of the WO in the form of a Purchase Order.

At Client's discretion, the Client may elect to execute a Project Specific Construction agreement for certain projects in the form attached hereto as **Exhibit A**.

For any project undertaken under this Agreement that qualifies as a public construction project under Florida law, the Client's Project Specific Construction Agreement, including its General Conditions, shall govern and control in the event of conflict, and shall supersede any inconsistent provisions of this Agreement.

In the event that CCR cannot start the job by **60 days from the approved work order** because of delays of any nature which are caused by the Client or other contractor employed by it or other circumstances over which CCR has no control, then the Price may be renegotiated to reflect any increased costs.

4. INSURANCE

CCR shall purchase and maintain insurance coverage and policy limits as referenced in **Exhibit B-Insurance Requirements**.

5. SERVICES TO BE FURNISHED BY CCR

CCR shall furnish supervision, labor, material, and equipment required to complete the work, except as noted in Paragraph 9, on existing infrastructure assets including, but not limited to concrete structures, steel structures, and plant piping. All services will be performed in accordance with **Exhibit C – Scope and Specifications**. Typical services furnished by CCR include:

- a. Level 1 Inspection:
 - i. Exterior Structural Evaluations
 - ii. Exterior Code/Standard Compliance Testing
 - iii. Exterior Coating Evaluations
 - iv. Photographic Documentation
 - v. Condition Assessment Report
- b. Level 2 Inspection:
 - i. Interior and Exterior Structural Evaluations
 - ii. Interior and Exterior Code/Standard Compliance Testing
 - iii. Interior and Exterior Coating Evaluations

- iv. Photographic Documentation
- v. Signed and Sealed Condition Assessment Report

- c. Coatings
 - i. Application of High-Performance Coating Systems, as Needed

- d. Corrective Maintenance/Rehabilitation
 - i. Concrete Repairs
 - ii. Crack Repair
 - iii. Epoxy Injection
 - iv. Joint Repair
 - v. Leak Remediation
 - vi. Concrete Surface Preparation
 - vii. Hydro Demolition (I.E. Removal of Exterior Coatings to Bare Concrete/Shotcrete)
 - viii. Structural Repairs
 - ix. Shotcrete Repairs and Restoration

- e. Upgrades/Retrofit
 - i. Waterproofing and Sealants
 - ii. Seismic Upgrades (If Required)
 - iii. Piping and Modifications
 - iv. Safety/Security Enhancements or Modifications
 - v. Improved Access (Wall or Roof)
 - vi. Baffle Walls/Mixing Systems
 - vii. Antennae Support Structures

6. CCR SERVICE CONDITIONS AND CRITERIA

- a. CCR is the sole source authorized to provide parts and services on CCR utility tanks and shall follow prescribed procedures as outlined in CCR's guidelines for maintenance and inspections.

- b. It is the intent of this Agreement that not only will tanks receive corrective maintenance and inspections on an as-needed basis but will also receive routine annual (Level 1) and five-year preventive maintenance inspections (Level 2 or Enhanced Level 3) as prescribed by and in compliance with governing regulations and CCR's guidelines for maintenance and inspections.

- c. A Level 1 exterior only inspection entails the preparation of an electronic, comprehensive written report, which includes a photographic record documenting the inspection.

- d. A Level 2 exterior and interior inspection involves the creation of an electronic, comprehensive written report, signed and sealed by a licensed Professional Engineer, accompanied by a photographic record of the inspection.

- e. Repair materials that are in contact with potable water will be NSF 61 compliant.
- f. CCR will perform site visits to ascertain existing conditions of the areas before providing estimates or performing work.
- g. Work shall conform to current regulatory and safety requirements, as well as following guidelines for product use from manufacturers at the time of service.
- h. CCR will ensure conditions on the work site reflect good housekeeping and safety practices at all times. CCR will be responsible for removing trash and debris from the work site related to the work performed pursuant to the Work Order.
- i. CCR will only store equipment and products directly related to the maintenance services at the work site.

7. HOURS OF WORK/INVOICING

- a. Standard crew availability is defined as Monday through Friday between 7:00 a.m. - 6:00 p.m., for ten-hour shifts up to forty hours; however, the Superintendent may choose when to begin work for the crew as needed to maintain the job schedule, and shall be paid at the rate provided on the Fee Schedule, attached hereto as **Exhibit "D."**
- b. Services provided in excess of the standard ten-hour shift, and a forty hour work week, where agreed upon by the client in advance and in writing, shall be paid at the After-Hours rate as shown on the Fee Schedule. After Hours work may only be performed by written approval of the Client.
- c. CCR's invoices for subcontracted services shall include a copy of the subcontractor's invoice to the Client upon request and show the percent markup, as stated on the Fee Schedule.

8. RESPONSE TIME

- a. CCR will respond to each request for corrective service or for a project estimate within five business days of notification and provide a written estimate within fifteen business days after evaluation. Client shall notify CCR via email or phone call.
- b. CCR shall provide a crew onsite for emergency services within forty-eight (48) hours of receiving an emergency request via email or telephone. To accomplish this, CCR has multiple locations throughout the region.

9. MATERIALS AND SERVICES FURNISHED BY CLIENT OR OTHERS

It is understood that the following services shall be provided by others without expense to CCR:

- a. Client will grant or obtain free access to the site for all equipment and personnel necessary for CCR to perform the work set forth in this Agreement. The Client will notify any and all processors of the project site that Client has granted CCR free access to the site. CCR will take reasonable precautions to minimize damage to the site, but it is understood by Client that, in the normal course of work, some damage may occur. Repair for damage caused by CCR shall be the responsibility of CCR.

- b. The Client is responsible for the accuracy of locations for all subterranean structures and utilities. CCR will take responsible precautions to avoid known subterranean structures., and the Client waives any claim against CCR, and, subject to the limits set forth in section 768.28, Florida Statutes, agrees to defend, indemnify, and hold CCR harmless from any claim or liability for injury or loss, including costs to defend, arising from damage done to subterranean structures and utilities not identified or accurately located. IN Nothing herein shall be construed as a waiver of Client's sovereign immunity nor as consent to be sued by third parties.
- c. A continuous supply of potable water under 50-psi pressure at the rate of 60-gallons per minute for the use of the CCR crew within 100-feet of the work site.
- d. A continuous supply of electricity during the period of work: one 50-AMP, 110/220-volt service for the operation of our power tools and accessories, located not more than 100-feet from the work site. Please be sure that all circuit breakers are ground-fault protected. If it is necessary for CCR to supply its own electric power, add \$500.00 per week to the Price. If scope of work includes ultra-high pressure water blasting, 20-AMP, 480-volt services is required.
- e. Any permit fees or other fees from any Authority Having Jurisdiction (AHJ) as may be required for the work including, but not limited to, all connect/disconnect, impact, and building/construction fees.
- f. Drainage and disposal of the structure's contents shall be completed by the Client. Client will provide notification of tank status to CCR.
- g. Cleaning of the exterior of the tank and accessories.
- h. Disinfection may be provided by the Client or by CCR as outlined in the individual work order. Client will be responsible for refilling of the structure's contents.
- i. Complete lock out and tag out of the subject structure, as required, prior to Village personnel entering the structure and coordinate with CCR to review all lock out tag out procedures performed and the general status of the tank prior to turning over control of the tank to CCR for CCR safety evaluation. CRR shall be solely responsible for the safety procedures required for the approved scope of work.
- j. Adhesion Testing: Method A "X-Cut Tape Test", per ASTM D3359, shall be completed by a qualified coatings inspector or coatings manufacturer representative prior to application of any new coating systems. Results of this test must be 4A or greater. If the results of this test are less than a 4A, CCR and the Client will have to re-evaluate the proposed scope of work and pricing.

Professional engineering design services (if required). Professional Engineering service such as level 2 inspection reports may be provided by CCR as outlined in an individual work order.

- i. Hazardous material removal and disposal as required by the specifications or safety guidelines.

10. BACK CHARGES AND CLAIMS FOR EXTRAS

The work order price may only be changed by a written change order. Any Claim for an adjustment in the Work order price shall be based on written notice submitted by CCR to the Client **prior to the work being completed**. Changes to the work order price will be issued via a revised PO.

CCR's claims for extras shall carry 30% for overhead and 10% for profit. Any mutually agreed upon deductive change order will provide only a credit for 10% profit but will not provide a credit for 30% overhead.

11. SCHEDULE COMMENCEMENT, AND DELAYS

NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST CLIENT BY REASON OF ANY DELAYS. CCR shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Client for direct, indirect, consequential, impact or other costs, expenses, or damages, including, but not limited to, costs of acceleration or inefficiency, arising from delay, disruption, interference, or hindrance, whether reasonable, unreasonable, foreseeable, avoidable, or unavoidable. CCR shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delays, in accordance with and to the extent specifically provided herein.

12. STANDARD OF CARE, INDEMNIFICATION

All design professionals performing work under this Agreement shall perform such services in accordance with the standard of care used by similar professionals in the community under similar circumstances. Pursuant to section 775.08, Florida Statutes, CCR agrees to indemnify and hold harmless Client, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the design professional in the performance of the contract.

13. ASSIGNMENT AND THIRD PARTIES

Neither the Client nor CCR may delegate, assign, sublet or transfer their duties or any interest in this Agreement without the written consent of the other party. Both parties agree there are no intended third-party beneficiaries to this Agreement including other contractors or parties working on the project, or, if necessary, a surety of CCR.

14. LABOR

This Agreement is predicated on open-shop labor conditions, using CCR's own personnel. If CCR is required to employ persons of an affiliation desirable to the Client or other contractor employed by him or the general contractor thereby resulting in increased costs to CCR, the Price shall be adjusted accordingly. Such requirement shall not provide that CCR sign a contract with any labor organization. In the event of a labor stoppage, CCR shall not be in default or be deemed responsible for delay of the progress of this Agreement or damage to the Client or the contractor so long as CCR has sufficient qualified employees available to perform the work.

This Agreement is based on CCR's crew performing its Scope of Work in accordance with CCR's standard safety program. If any additional safety requirements are placed on CCR (not required by OSHA) such as: site training, additional safety equipment or permit required confined space, the cost for such additional requirements plus 30% for overhead shall be reimbursed to CCR.

15. QUOTATION

CCR will issue a Work Order (WO), which will describe the structure, the work to be performed as well as the deadline to complete the job. The WO will detail the level of inspection services, if applicable, and line item pricing calculated based on the fee schedule stated below. The Client will issue approval of the WO in the form of a Purchase Order (PO). Work pursuant to the PO and WO will not be billed on in accordance with the fee schedule attached hereto as **Exhibit D**.

At Client's discretion, the Client may elect to execute a Project Specific Construction agreement for certain projects in the form attached hereto as **Exhibit A**.

The following conditions apply to Exhibit D- Fee Schedule:

- b. For interior repair items, each structure shall be drained before the work is performed.
- c. The pricing includes supervision, labor, materials and equipment required to complete the work.





Periodic and final payment, including any retention, shall be made in accordance with applicable state Prompt Payment law, and is to be received by us in our accounting office at 250 SW 36th Terrace, Gainesville, Florida 32607..

A surcharge of 4% will be added to all credit card payments.

If a Public Construction Bond is required, add \$9.00 per \$1,000 of project amount.

16. DISPUTE RESOLUTION

In the event of a controversy or claim related to this Proposal, then the Parties will engage in high-level management discussions within five (5) days of written notice to the other Party. If the issues remain unresolved, then the Parties will engage in Mediation per AAA Construction Industry Mediation Rules in the State of the place of the Project, unless an alternative location is agreed upon by the Parties in writing. The mediation shall be convened within thirty (30) days of a Party's mediation request. Each Party shall be responsible for their own attorneys' fees for the mediation; and the mediator costs shall be shared equally by the Parties. If the matter still remains unsettled after submission to mediation, the Parties may engage in litigation in the state or federal court having jurisdiction in the location of the Project, and the laws of State of the Place of the Project shall control jurisdiction, unless otherwise agreed to by the Parties in writing. The Prevailing Party shall be entitled to reasonable attorneys' fees and costs from the Non-Prevailing Party, upon an award of the Court.

17. CHANGES IN SCOPE AND LIMITATIONS

If the Client wishes to have CCR perform any additional repairs or remediation of the structure(s) or accessories, it shall authorize such work in writing and pay CCR its standard charges for such work.

It is agreed that CCR shall not be responsible for any consequential, special or delay damages, or any force majeure events, including but not limited to acts of God and pandemic. CCR does not assume responsibility for differing, latent or concealed conditions, which differ materially from those indicated in the subcontract/contract documents or from those ordinarily found to exist and not inherent in the Work, including but not limited to weather or subsurface conditions, and not caused by CCR's fault or negligence.

18. TERMINATION

This Agreement may be terminated by either party upon thirty (30) days written notice. In the event of termination, CCR shall be paid for services performed to the termination notice date.

In the event of termination, or suspension for more than three (3) months prior to completion of all work contemplated by the Agreement, CCR may complete such analyses and records as necessary to complete their files and may also complete a report on the services performed to the date of notice of termination or suspension. The expense of termination or suspension shall include all direct costs of CCR in completing such analyses, records and reports if necessary. CCR shall present all costs to owner for approval in writing prior to proceeding with work outlined in this section.

CCR will warranty its workmanship and materials on its work covered in this Proposal for a period of one year after completion of its work. Prior to leaving the location, CCR personnel will perform a walk-through with the responsible party overseeing its work for the Client. If any defects in CCR's workmanship or materials appear within the one-year period after completion and acceptance of CCR's work, CCR shall promptly make repairs at its own expense upon written notice by the Client that such defects have been found. CCR's warranty is limited to defects in CCR's workmanship and materials, excluding inspections, cleaning, and disinfection services ("Services"). CCR shall endeavor to perform these Services with that degree of care and skill ordinarily exercised under similar circumstances by contractors practicing in the same discipline at the same time and location. CCR shall not be responsible for, nor liable for, delamination of previous coatings application, any ordinary wear and tear, or for damage caused from negligent or inappropriate use or by any other entity beyond CCR's control, including but not limited to modifications, work, or repairs by others.

If a bond is required for the Scope of Work included in this Agreement, CCR will furnish a one-year Public Construction Bond. The cost of this bond is **not included** in our price. Please add \$9.00 per \$1,000 of project value.

20. INDEPENDENT CONTRACTOR

CCR undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance. WELLINGTON shall have no right to supervise the methods used, but WELLINGTON shall have the right to observe such performance. CONSULTANT shall work closely with WELLINGTON in performing Services under this Agreement.

21. COMPLIANCE WITH LAWS

In performance of the Services, CCR will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, standards, emergency orders, and health guidelines.

22. NON-DISCRIMINATION

CCR shall not unlawfully discriminate against any person in its operation and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. CCR shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by this Agreement, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CCR shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruiting advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship) and accessibility.

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

23. WAIVER

A waiver by either Client or CCR of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

24. SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement, and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

The provisions of this Article shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

25. ENTIRETY OF AGREEMENT

Client and CCR agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or

understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between CLIENT and CCR pertaining to the Services, whether written or oral. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

26. MODIFICATION

This Agreement may be modified only by a written amendment executed by both parties.

27. OWNERSHIP OF DOCUMENTS

Any and all documents, records, disks, or other information generated in connection with this Agreement shall become the property of Client for its use and/or distribution as may be deemed appropriate by Client. Notwithstanding as otherwise stated herein, and to the extent permitted by Florida law, Contractor maintains ownership over and proprietary rights to Contractor's Intellectual Property including but not limited to: drawings, patents, trademarks, and copyrights. Contractor's work including its Intellectual Property is provided with the understanding that reproduction, distribution, publication and derivative works are not permitted in whole or part, except as directed by Contractor in writing. Contractor maintains all legal and equitable title to its drawings and authorizes and grants a license to use such works for the Owner's internal purposes. If Contractor considers any materials provided to Client confidential and exempt from disclosure pursuant to Chapter 119, Florida Statutes, Contractor must include both a redacted and an unredacted copy of all claimed exempt materials and provide Wellington with citations to the Florida Statute(s) that support the claimed exemption. If Contractor does not comply with this section, its materials will not be treated as exempt and will be subject to disclosure if requested thirty (30) days after such request is made.

28. ACCESS AND AUDITS

CCR shall maintain adequate records to justify all charges and costs incurred in performing the Services for at least three (3) years after completion of this Agreement. CLIENT shall have access to such books, records, and documents as required in this Article for the purpose of inspection or audit during normal working business hours at CCR'S place of business.

29. NOTICE

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

As To CLIENT

Village of Wellington
12300 Forest Hill Blvd
Wellington, Florida 33414
Attn: Danielle Zembrzuski

As To CCR

CROM, LLC DBA CROM Coatings and Restorations
250 SW 36th Terrace
Gainesville, FL 32607
Attn: Jeffrey Pomeroy

Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received; however, facsimile transmissions received (i.e., printed) after 5:00 p.m. or on Fridays, weekends or holidays will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CCR and Client.

30. PALM BEACH COUNTY OFFICE OF INSPECTOR GENERAL

In accordance with the Office of Inspector General, Palm Beach County, Florida Ordinance, Palm Beach County Code Section 2-422, this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CCR has reviewed Palm Beach County Code Section 2-422 and is aware of its rights and/or obligations under such ordinance.

31. PUBLIC ENTITY CRIMES

CCR may not be a person or affiliate identified on the Department of General Services "Convicted Vendor" list. This list is defined as consisting of persons and affiliates who are disqualified from the public contracting and purchasing process because they have been found guilty of a public entity crime. The CCR shall comply with section 287.133, Florida Statutes, as is amended from time to time.

32. TIME

Time is of the essence in all respects under this Agreement.

33. PREPARATION OF AGREEMENT

This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

34. PUBLIC RECORDS

IF THE CCR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR TO THE CCR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, CHEVELLE HALL AT 561-791-4000, CHALL@WELLINGTONFL.GOV, 12300 FOREST HILL BLVD. WELLINGTON, FL 33414.

35. SCRUTINIZED COMPANIES

Pursuant to sections 215.4725 and 287.135 of the Florida Statutes, by entering into this Agreement, CCR certifies that it, its affiliates, suppliers, subcontractors, and CCRs who will perform or benefit hereunder, are not on the Scrutinized Companies that Boycott Israel

List and are not participating in a boycott of Israel. If this Agreement is valued greater than \$1 million, CCR further certifies pursuant to sections 215.473 and 287.135, Florida Statutes, that it, its affiliates, suppliers, subcontractors, and CCRs who will perform or benefit hereunder, (a) have not been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sectors List; and (b) do not have business operations in Cuba or Syria. Submitting a false certification shall be deemed a material breach of this Agreement. If the Village determines, using credible information available to the public, that CCR has submitted a false certification, or otherwise engaged in any of the activities prohibited by this paragraph or the applicable Florida Statutes, the Village may terminate this Agreement and pursue the remedies set forth in section 287.135, Florida Statutes, and any other available remedies.

36. COUNTERPARTS

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

37. E-VERIFY

Compliance with FS 448.095 - Client requires all CCRs, contractors and subcontractors to register with the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of their newly hired employees. All contractors performing work for Client are required to provide proof of registration with the E-Verify System and must provide an affidavit stating that each subcontractor it hires does not employ, contract with, or subcontract with an unauthorized alien.

38. ACCEPTANCE

This Agreement is offered for your acceptance within **60-days** from the agreement date. We reserve the right after that period to amend our bid to reflect our changing construction schedules, materials, and labor rate changes. The return to this company of a copy of this agreement with your acceptance endorsed thereon within the time aforesaid will constitute a contract between us. This agreement shall be made a part of any contract agreement or purchase order.

Sincerely,

CROM Coatings and Restorations, a Division of CROM, LLC



Cameron Kenyon
Business Development Manager



Nick Martin
Regional Manager

/nkm.dbt

ACCEPTED BY CLIENT
Village of Wellington

PRINT: _____

TITLE: _____

DATE: _____

CROM, LLC DBA CROM Coatings and Restorations

BY: Robert G. Oyenarte

Printed Name/Title: Robert G. Oyenarte / CEO

EXHIBIT "A"
PROJECT SPECIFIC CONSTRUCTION
CONTRACT TEMPLATE

AGREEMENT

THIS AGREEMENT is dated and will be effective on the _____ day of _____ in the year _____, by and between the **VILLAGE OF WELLINGTON**, a Florida municipal corporation, through its Village Council, (hereinafter referred to as "Owner" or "Village"), and _____ a Florida _____ (hereinafter referred to as "Contractor"), having its principal office at _____ for _____ (hereinafter referred to as the "Project") in accordance with the Contract Documents, hereinafter defined.

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – SCOPE OF WORK

The Contractor will provide all materials, supervision, light, power, transportation, labor, tools and equipment necessary to complete the work in strict accordance with the Contract Documents as defined in Article 2 of this Agreement, and perform all work that is reasonably inferable therefrom as being necessary to accomplish the intent of the Contract Documents, and as required by the manufacturer's specifications and all applicable laws, ordinances and rules and regulations of any governing authority including but not limited to the requirements of the Florida Building Code and any amendments thereto. The work to be performed shall hereinafter be referred to as the "Work".

The Work is generally described as follows:

ARTICLE 2 - CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire Agreement between Owner and Contractor concerning the Work, consist of the following:

- 2.1 This Agreement;
- 2.2 Addenda numbers: NA
- 2.3. General Conditions attached hereto as **Exhibit "A"**;
- 2.4 Signing Authority to Agreement attached hereto as **Exhibit "B"**;
- 2.5 Scope and Specifications of Work attached hereto as **Exhibit "C"**;
- 2.6 Public Construction Bond in the form attached hereto as **Exhibit "D"** which shall be in compliance with Fla. Stat. § 255.05 (plus Power of Attorney Forms as applicable);
- 2.7 NOT USED
- 2.8 Sales Tax Recovery Program Special Conditions For Owner Furnished Materials and Equipment attached hereto as **Exhibit "F"**;
- 2.9 Contractor's Schedule of Values attached as **Exhibit "G"**;
- 2.10 Contractor's Certificate(s) of Insurance attached hereto as **Exhibit "H"**;
- 2.11 Warranty Forms attached hereto as **Exhibit "I"**;
- 2.12 Form of Certificate of Substantial Completion attached hereto as **Exhibit "J"**;
- 2.13 Form of Application for Payment attached hereto as **Exhibit "K"**;
- 2.14 Form of Bill of Sale, Absolute attached hereto as **Exhibit "L"**;
- 2.15 Form of Contractors affidavit to Owner and Final Release of Liens, attached hereto as **Exhibit "M"**;

2.16 Contractor's Forms and Misc. Requirements attached hereto as **Composite Exhibit "N"**:

Exhibit "N1"	Conflict of Interest Statement
Exhibit "N2"	Non-Collusion Affidavit

2.17 Sales Tax Exemption Certificate of Entitlement attached hereto as **Exhibit "O"**;

2.18 The following which may be delivered or issued after the Effective Date of the Agreement may not be attached hereto: Notice to Proceed, all written amendments and Change Orders signed by both parties and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

2.19 The Contract Documents listed under Article 2 above are attached to this Agreement (except as expressly noted otherwise above) and include any documents referenced in the Agreement or Contract Documents to be incorporated by reference. There are no Contract Documents other than those listed above in this Article 2. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions. The Contract Documents shall be interpreted together and in harmony with one another. In the event of a conflict between or among the Contract Documents, whichever document imposes the greater obligation on Contractor shall control. The Contractor must call any such conflict or discrepancy to the Village's attention, in writing or the Contractor waives and releases any claims it might have related to such conflict, unless otherwise stated herein. The Contractor shall not proceed when in doubt as to any dimension or measurement but shall seek clarification from the Engineer (defined below).

ARTICLE 3 - ENGINEER

Notwithstanding anything contrary to language contained in the Agreement, the roles and responsibilities of the Owner and Engineer during construction are as follows:

The Owner will serve as the Owners Representative. All communication relative to Contractors obligation under Agreement shall be through the Owner. The Owner will act as the Engineer during construction unless otherwise notified by Owner. The responsibilities of the Engineer are in Article 9 of the of the General Conditions.

ARTICLE 4 - TIME OF COMMENCEMENT AND COMPLETION

4.1 The time of commencement of the Work shall be the date stated in the Notice to Proceed, as defined in the General Conditions ("Date of Commencement"). Contractor shall reach Substantial Completion of all Work within _____ calendar days from the Date of Commencement, subject to any authorized extensions of time as set forth in the Article 12 of the General Conditions. All Work shall be performed in an expeditious manner. Contractor shall reach Final Completion of all Work within _____ (____) days of Substantial Completion and delivery of the Final Punch List as required by the Contract Documents.

4.2 **LIQUIDATED DAMAGES.** The parties to this Agreement agree that time is of the essence in the performance of this Agreement. Substantial Completion of the Work under this Agreement, as defined in Article 1 of **Exhibit "A"**, shall be no later than the Substantial Completion date set forth in Section 4.1 of this Agreement, subject to authorized extensions of time as set forth in the Article 12 of the General Conditions. In the event the Work is not substantially completed by the completion date stated above, and has not been extended by Change Order, the Owner shall be entitled to collect liquidated damages. Contractor and Owner agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the difficulty of determining these damages, the Contractor shall pay the Owner the sum of Two Hundred Fifty Dollars (\$250.00) for each calendar day in achieving Substantial Completion of the Work. Further, Contractor and Owner agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the difficulty of determining these damages, the Contractor shall pay the Owner the sum of Two Hundred Fifty Dollars (\$250.00) for each and every calendar day of unexcused delay for failure to achieve Final Completion. It is hereby agreed that the amount of the per diem assessment for liquidated damages for the Contractor's failure to achieve Substantial Completion of the Work or Final Completion of the Work within the time specified in this Agreement is not a penalty and not excessive in light of the circumstances known to the parties at the time this Agreement is executed. The Owner's exercise of its right to terminate this Agreement shall not release the Contractor from its obligation to pay liquidated damages in the amount set forth herein. Such assessments shall be immediately due and payable to the Owner or, at the Owner's option, may be deducted from future payments that may be due and owing to Contractor. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as

liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Agreement. Contractor's liability for liquidated damages shall survive completion and termination of the Agreement and are in addition to Owner's other remedies available under the Contract Documents and by law.

ARTICLE 5 - CONTRACT PRICE

In accordance with the Schedule of Values, established pursuant to Paragraph 2.05 of the General Conditions, Owner shall pay the Contractor for the performance of the Work in accordance with the Contract Documents, subject to adjustment as provided in the Contract Documents, the lump sum of \$ _____, which includes Owner Controlled Contingency in the amount of \$ _____, inclusive of all materials, equipment, labor, warranties, licenses, permits, insurances, bond costs, taxes, overhead, profit and fees ("Contract Price"). The Owner shall be responsible for the costs associated with any Village of Wellington permits that are required for the performance of the Work. Notwithstanding the foregoing, Contractor is responsible for the costs associated with permits from all other governing authorities having jurisdiction over the Project, excluding the Village of Wellington. The Contract Price may include Unit Price Work and the Owner shall pay Contractor the unit prices specified in the Schedule of Values for the required Unit Price Work that may be required in accordance with the Contract Documents. All unit price items specified in the Schedule of Values are inclusive of all costs for the performance of the Work, including, but not limited to, materials, equipment, labor, warranties, licenses, permits, insurances, bond costs, taxes, overhead, profit and fees.

ARTICLE 6 - PAYMENT PROCEDURES

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed and reviewed by Owner and Engineer as provided in Article 14 of the General Conditions.

6.1. PROGRESS PAYMENTS. Pursuant to Article 14 of the General Conditions, Owner shall make progress payments on account of the Work performed, including any Unit Price Work, on the basis of Contractor's Applications for Payment (**Exhibit "K"**) as recommended by Engineer, on or about the **10th** day of each month during construction as provided below. All progress payments will be on the basis of the percentage of completion and progress of the Work, and in the case of Unit Price Work based on the price per unit multiplied by the number of units completed, measured by the Schedule of Values established pursuant to Paragraph 2.05 of the General Conditions and **Exhibit "G"** attached to this Agreement.

6.1.1. Progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with Paragraph 14.02 of the General Conditions.

Ninety-five percent (95%) of Work completed and zero percent (0%) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in Paragraph 14.02.A of the General Conditions).

6.1.2. Owner is not obligated to reduce the retainage for any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to Section 218.735, Florida Statutes, Section 255.05, Florida Statutes, or for any amounts that are otherwise the subject of a Claim or demand by the Owner against the Contractor under this Agreement. The Owner shall promptly make such payment to the Contractor unless the Owner has grounds to withhold payment for amounts that are the subject of a good faith dispute, the subject of a Claim pursuant to Section 218.735, Florida Statutes, Section 255.05, Florida Statutes, or are otherwise the subject of a Claim or demand by the Owner against the Contractor. If the Owner makes payment of retainage to the Contractor, which is attributable to the labor, services, or materials supplied by one or more Subcontractors or suppliers, the Contractor shall timely remit payment of such retainage to those Subcontractors and suppliers. Upon Substantial Completion of the Work, and the completion of the punch list, the amount withheld by the Village shall be reduced to the value of 150% of the total cost to complete any disputed items on the punch list, which shall be deducted from any amounts due.

6.2. FINAL PAYMENT. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, and settlement of all Claims, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 14.07 of the General Conditions.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, Site, locality, and all local conditions, Laws, and Regulations that in any manner may affect the cost, progress, performance, or furnishing of the Work.

7.2 Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies which pertain to the subsurface conditions at or contiguous to the Site or otherwise may affect the cost, progress, performance or furnishing of the Work as Contractor considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.03 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

7.3 Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all examinations, investigations, explorations, tests, reports and studies which pertain to the physical conditions at or contiguous to the Site or otherwise may affect the cost, progress, performance or furnishing of the Work as Contractor considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

7.4 Contractor has given Owner written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Contractor.

7.5 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

7.6 Contractor represents that it is a properly qualified and licensed contractor in good standing with the State of Florida and is a Florida General Contractor in good standing, organized and existing under the laws of the State of Florida. Contractor further represents that it is well qualified and able to perform the Work; it has a sufficient number of qualified personnel to assure timely performance of the Work; that it has the proper tools and equipment to perform the Work and is financially capable of performing the Work and all the requirements stated within the Contract Documents.

7.7 Contractor represents that all Work will be of first quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective. The Contractor shall supervise and direct the Work using its best skill and attention. All Work shall be performed by craftsmen skilled in the trades and application of materials involved. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and shall comply with all OSHA regulations regarding job safety and all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property.

ARTICLE 8 - INDEMNIFICATION

8.1 Subject to Paragraph 6.20 of the General Conditions, to the fullest extent permitted by the law, Contractor shall indemnify and hold harmless the Owner, and its council members, officers, directors, agents, members and employees and Engineer and its officers, directors, agents, members and employees ("Indemnified Parties"), from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees at the trial and appellate level, but only to the extent caused by the negligence, recklessness, wrongly or intentionally wrongful conduct, act or omission of the Contractor and other persons employed or utilized by Contractor, any of Contractor's Subcontractors, agents or others for whom the Contractor is responsible, arising from this Agreement or its performance. The Owner's contributory negligence shall only reduce, but not prevent, the Contractor's obligation to indemnify provided herein. Nothing in the Contract Documents shall be construed or interpreted as consent by the Owner to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes.

8.2 In any and all claims against Indemnified Parties by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them

may be liable, the indemnification obligation under Paragraph 8.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

8.3 The parties intend for this indemnification provision to be enforceable pursuant to Sections 725.06 and 725.08, Florida Statutes and as such, hereto acknowledge and agree that to the extent that any portion of this indemnification provision is deemed void or unenforceable in any action or proceeding, then such portion is considered severable and will not affect the remaining portions of this provision. The Contractor shall indemnify and hold harmless all of the Indemnified Parties from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's indemnity and hold-harmless obligations under this Contract. This indemnification provision does not extend to provide indemnification to the Indemnified Parties for their own negligence and therefore, the parties agree that the indemnification obligations should be construed in accordance with Sections 725.06 and 725.08, Florida Statutes.

8.4 The indemnity provisions of this Article 8 shall survive termination and completion of the Agreement.

ARTICLE 9 – SUBCONTRACTS

No portion of the Work may be subcontracted to vendors not listed on the Schedule of Subcontractor without the prior written consent of the Village, which consent may be withheld for any reason. It is further agreed that all subcontracts and material and equipment purchase contracts entered into by Contractor or its subcontractors or material suppliers, shall contain a provision stating that the Owner may bring claim directly against any subcontractor of Contractor for breach of Contract, warranty rights, quality of workmanship, and create third party beneficiary rights of Owner in said agreements. Additionally, nothing contained in this Contract shall constitute an assignment of Contractor's rights against the Owner or create any third party beneficiary rights in any subcontractors or material and equipment suppliers of Contractor. The purpose of this provision is to allow the Owner, in addition to Contractor, to make claim for damage or indemnification directly against any subcontractors or material and equipment suppliers that may be ultimately responsible for defects or deficiencies in the Work or materials and equipment.

ARTICLE 10 – TIME & DELAYS

Any changes in the Work, changes in the Contract Price and/or Contract Time shall be executed via written Change Order pursuant to Articles 10 and 12 of the General Conditions. Further, if the Contractor is delayed at any time in the progress of the Work, any approved changes in the Contract Time shall similarly be executed via written Change Order pursuant to Article 12 of the General Conditions. All requests by the Contractor for extensions of the Contract Time, other than those associated with changes in the Work, must be submitted in writing to Owner's Representative within the time period specified in Article 12 of the General Conditions. Failure to so request an extension of the Contract Time will constitute a waiver of any right for an extension of the Contract Time.

ARTICLE 11 – BONDS AND INSURANCE

The Contractor shall furnish public construction bond pursuant to Article 5 of the General Conditions. The Contractor shall also, as a condition of this Agreement and to payment under this Agreement, purchase and maintain the insurance coverage and policy limits as delineated within Paragraph 5.04 and 5.05 of the General Conditions and the Supplementary Conditions.

ARTICLE 12 – SALES TAX INFORMATION

The Owner Sales Tax Recovery Program Special Conditions are incorporated herein by reference. To be entitled to purchase materials tax exempt for a public works project, the Owner is required to issue a Certificate of Entitlement to each vendor and to the Contractor to affirm that the tangible personal property purchased from that vendor will go into or become a part of a public work. The Owner's purchase order for tangible personal property to be incorporated into the public works project must be attached to the Certificate of Entitlement. The Owner must issue a separate Certificate of Entitlement for each purchase order. The Owner's form Certificate of Entitlement is attached hereto as **Exhibit "O"**. By executing each Certificate of Entitlement, the Owner affirms that the purchase of the tangible personal property contained in the attached Purchase Order meets the applicable exemption requirements contained in Section 212.08(6), Florida Statutes, and Rule 12A-1.094, F.A.C. If the personal property sold by a vendor tax-exempt pursuant to a Certificate of Entitlement does not qualify for the exemption under

Section 212.08(6), Florida Statutes, and Rule 12A-1.094, F.A.C., the Owner will be liable for any tax, penalty, and interest determined to be due.

ARTICLE 13 - PROJECT SIGNAGE

Contractor shall furnish and erect one (1) Owner standard signs at the Project site as directed by the Owner. Contractor may install signage at the Project site subject to approval by the Owner.

ARTICLE 14 – CONFLICT OF INTEREST

This Agreement is subject to any and all applicable conflict of interest provisions found in the policies or Code of Ordinances of the Village of Wellington, the Palm Beach County Code of Ethics and Ch. 112, Part III, Florida Statutes. The Contractor's completed Conflict of Interest Statement shall be attached hereto and incorporated herein as **Exhibit "N1"**. During the term of this Agreement and any renewals or extensions thereof, the Contractor shall continue to disclose to Owner any possible conflicts of interests. The Contractor's duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of Owner.

ARTICLE 15 – TRANSFER OF LIEN

In the event any liens should be filed against the Site by any lienors, in connection with labor or services performed, Contractor shall indemnify and hold the Owner harmless against all such liens and suits or other proceedings pertaining thereto including any and all costs and attorneys' fees, at both the trial and appellate level. If any such liens are filed then Contractor must forthwith within twenty (20) days of notice of the lien, transfer such lien to security in accordance with Florida Statutes. Should Contractor fail to transfer such lien, the Owner may, at its option, do so and deduct the amount expended, including all costs and attorney's fees incurred from any payment then due Contractor.

ARTICLE 16 – DISPUTE RESOLUTION

16.1 If the parties mutually agree, disputes may be referred to mediation. However, mediation shall not be a condition precedent to litigation of any disputes. All costs of mediation shall be shared equally by the parties. Venue for litigation concerning this Agreement or the Contract Documents shall be in Palm Beach County, Florida. In the event of litigation to settle disputes arising out of this Agreement or the Project, the prevailing party shall be entitled to recover against the other party its cost and expenses, including reasonable attorney's fees, which shall include any fees and costs attributable to appellate proceedings arising on and of such litigation.

16.2 Waiver of Trial By Jury. IN THE EVENT OF LITIGATION, BOTH PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT EITHER PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE CONTRACT, OR BREACH THEREOF, OR IN CONNECTION WITH WORK OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ANY ACTIONS OR INACTIONS OF EITHER PARTY.

ARTICLE 17 – MISCELLANEOUS

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

17.2 **Public Entity Crime Statement.** Contractor acknowledges the existence of Section 287.133(2)(a), Florida Statutes ("Public Entity Crimes Act"), which provides, in part, that 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 Owner, may not submit a bid on a contract with Owner for the construction or repair of a public building or public work, may not submit bids on leases of real property to Village, may not be awarded or perform work as a Contractor, supplier, Subcontractor, or Consultant under a contract with Village, and may not transact business with Owner in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this Section by Contractor shall result in termination of this Agreement by Owner without penalty.

17.3 **Truth-In-Negotiation Certificate.** Signature of this Agreement by Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original Contract Price and any

additions thereto shall be adjusted to exclude any significant sums, by which Owner determines the Contract Price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

17.4 **Records.** Contractor shall keep such records and accounts and require any and all architects, Consultants, and Subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement. Such books and records will be available at all reasonable times for examination and audit by Owner and for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, CHEVELLE D. HALL AT 561-791-4000, CHALL@WELLINGTONFL.GOV , 12300 FOREST HILL BLVD. WELLINGTON, FL 33414.

17.5 In accordance with Palm Beach County Ordinance Number 2011-009, this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County Ordinance Number 2011-009 and is aware of its rights and/or obligations under such ordinance.

17.6 **Village of Wellington's Purchasing and Procurement Procedures Manual.** Contractor shall comply with all Contractor requirements of the Village of Wellington's Purchasing and Procurement Procedures Manual as adopted by Resolution No. R2023-04.

17.7 **Not Used**

17.8 **Code of Ethics & Conduct.** If Contractor violates or is a party to a violation of the Florida Statutes Chapter 112 or the Palm Beach Code of Ethics (Sec. 2-441 et. seq), Contractor may be in material breach of this Agreement and may be disqualified from bidding on any future bids for work of goods with the Owner.

17.9 **Non-Collusion.** This Agreement is made without collusion or fraud. No premiums, rebates, or gratuities are permitted with, prior to, or after any delivery of material or provisions of services. Any violation of this provision may result in termination of this Agreement, return of materials or discontinuation of services, and the possible removal of Contractor for bidder lists.

17.10 **Drug-Free Workplace.** Execution of this Agreement by Contractor shall serve as Contractor's certification that it either has or that it will establish a drug-free workplace consistent with Chapter 112.0455, Florida Statutes.

17.11 As part of the Village's National Pollutant Discharge Elimination System (NPDES) requirements, Contractor may be required to achieve training which may include but not be limited to a live presentation and/or video presentation. Contractor is responsible for all costs associated with the training.

17.12 **Traffic Control and Maintenance.** To the extent applicable, the Contract Price includes all traffic control and traffic control costs related to the Work. The Maintenance of Traffic Plan and all traffic warning and control devices shall conform to the applicable provisions of the latest editions of the national "Manual On Uniform Traffic Control Devices" (MUTCD), and the 600 series of the Florida Department of Transportation's "Roadway and Traffic Design Standards". The MOT Plan shall be prepared by a Florida MOT Certified Technician if FDOT standard details are used. If FDOT standard details are not used, a Professional Engineer licensed in Florida shall prepare the MOT Plan. MOT Plans shall be submitted to appropriate agencies for approval. Costs of compliance with this Paragraph are included as part of the Contract Price.

17.13 **Existing Structures & Utilities.** All known utilities have been shown on the Plans and Drawings or otherwise provided in the Contract Documents according to the best information available. It is the Contractor's responsibility to contact all owners of structures or utilities above ground, on the surface, or below the ground, within the Project area so that said owners may stake, otherwise make, or protect their facilities. When structures and utilities have been properly shown or marked and are disturbed or damaged in the execution of the Work, they must be repaired immediately at Contractor's sole cost and expense in conformance with best standard practice and the approval of the owner of the damaged utility or structure. In the case of structures and utilities which have not been properly shown or located as outlined above and are disturbed or damaged in the prosecution of the Work, Contractor shall take whatever steps are necessary for safety and notify the affected utility owner and avoid any actions which might cause further damage to the structure or utility. Should the Work require repairs, changes, or modifications of the Owner's utilities as well as other utilities, it is the responsibility of the Contractor to provide for the maintenance of continuous water, sewage, electric, telephone and other utility services to all present customers of such utilities, unless approval in writing is secured from the applicable utility company or Owner for interruption of such service.

17.14 **Testing.** All tests and analyses, which are called for in the Specifications and/or Drawings to be performed by an Independent Testing Laboratory or otherwise, will be at the Owner's expense unless otherwise specified, provided the tests and analyses determine that the material(s) and/or Work meets the requirements as specified. All such tests that fail to meet the Project requirements are to be paid by the Contractor.

17.15 **Storage Site.** The Contractor shall furnish, at its expense, properly zoned area suitable for field offices, material storage and equipment service and storage, as applicable for the Project. The Contractor shall maintain these areas in a clean, orderly condition so as not to cause of nuisance in the area and shall restore the storage areas to its original or better condition.

17.16 The undersigned Contractor does hereby confirm to the Owner and Engineer that the Contractor has reviewed the provisions of Chapter 556, Florida Statutes, and has provided to "Sunshine State One-Call of Florida, Inc." the information required under F.S. 556.105 before the commencement of any excavation or demolition required for the Work.

17.17 **Compliance with Laws.** The Contractor shall give all notices, and warrants and represents that the Work will comply with all federal, state and local laws, ordinances, rules, regulations, and orders of any public authority having jurisdiction over the Work. Contractor shall comply with all ordinances, laws and rules of the State of Florida, Village of Wellington and Palm Beach County applicable to the Work. Contractor shall be liable for any deviation from any laws, ordinances, rules, regulations, and orders of any public authority even if in strict compliance with the Contract Documents. Contractor shall bear sole responsibility for and bear all costs necessary to insure full compliance with the representations contained herein, including, but not limited to any attorney's fees or other expenses incurred by Owner in responding to any complaints, citations, court orders, administrative orders or similar governmental edicts or process. The provisions of this paragraph shall survive the termination of this Agreement.

17.18 The Contractor acknowledges that the Florida Doctrine of Sovereign Immunity bars all claims by Contractor against the Owner other than Claims arising out of this Agreement. Specifically, except as provided in Section 768.28, Florida Statutes, the Contractor acknowledges that it cannot and will not assert any claims against the Owner, unless the claim is based upon a breach by the Owner of this Agreement.

17.19 The Contractor affirms that the provisions of the Contract Documents regarding notice to Claims, and the requirement for a written Change Order cannot be waived and further, without timely notice of a Claim or a written Change Order as required in the Contract Documents, the Contractor shall not be entitled to additional compensation or an extension of the Contract Time. Such Claims for additional compensation or extensions of the Contract Time are waived if the Contractor has not given all required notices and obtained a written a Change Order when required.

17.20 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation monies that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

17.21 Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained on the Contract Documents.

17.22 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

17.23 The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

17.24 This Agreement may not be amended or modified except by an instrument in writing signed by the party against whom enforcement of such amendment or modification is sought.

17.25 Counterparts: This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument.

17.26 Site Security. Security at the site is a very high priority to the Owner. The Contractor recognizes that this site is sensitive in nature as a result of homeland security concerns, and the security criteria stipulated herein constitutes a material inducement of the Owner to enter into this contract with the Contractor. In recognition of the Owner's security needs and the fact that this is an active and functioning facility, the Contractor agrees to take all reasonable steps to minimize the degree to which the facility is impacted by this construction project. The Owner reserves the right to require timing adjustment of activities that, in the sole determination of the Owner, impact the operation, efficiency or security of the Plant. The Contractor shall anticipate and work within the requirements of the Owner's security needs.

The Owner reserves the right to require the Contractor to perform a background check on all of Contractor's agents, licensees, invitees, employees, subcontractors, material workers, and suppliers entering the site and agrees to supply the results to the Owner. Contractor shall secure from the affected parties appropriate authorizations and releases from liability in favor of the Owner prior to performing the background checks. All background checks shall be performed prior to allowing the workers or suppliers access to the project site. The Owner reserves the right but not the obligation to disallow entrance to the work site of any persons or entities as a result of the background check or other relevant information, regardless of the result of such background check.

Background checks shall be in such form and fashion as is acceptable to the Owner, but at a minimum, shall be performed through the Florida Department of Law Enforcement. The Contractor shall allow sufficient time to perform the necessary background checks within the project schedule. Nothing herein shall be construed as consent to be sued by third parties and Contractor waives all claims for damages based upon the security measures set forth herein. Each third party upon whom a background check has been performed shall be required to carry a photo identification and a clearance tag. Such identification and clearance tag shall be required to enter the Plant and shall be maintained with the person at all times while on site. The Contractor shall provide to the Owner a complete roster of all parties who may enter the work site to perform the work called for by this agreement and shall keep said roster updated and current on at least a monthly basis.

17.27 Scrutinized Companies. Pursuant to sections 215.4725 and 287.135 of the Florida Statutes, by entering into this Agreement, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform or benefit hereunder, are not on the Scrutinized Companies that Boycott Israel List and are not participating in a boycott of Israel. If this Agreement is valued greater than \$1 million, CONTRACTOR further certifies pursuant to sections 215.473 and 287.135, Florida Statutes, that it, its affiliates, suppliers, subcontractors, and consultants who will perform or benefit hereunder, (a) have not been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sectors List; and (b) do not have business operations in Cuba or Syria. Submitting a false certification shall be deemed a material breach of this Agreement. If the Village determines, using credible information available to the public, that CONTRACTOR has submitted a false certification, or otherwise engaged in any of the activities prohibited by this paragraph or the applicable Florida Statutes, the Village may terminate this Agreement and pursue the remedies set forth in section 287.135, Florida Statutes, and any other available remedies.

17.28 **E-verify. Compliance with F.S. 448.095**

Wellington requires all contractors and subcontractors to register with the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of their newly hired employees. All contractors performing work for Wellington are required to provide proof of registration with the E-Verify System and must provide an affidavit stating that each subcontractor it hires does not employ, contract with, or subcontract with an unauthorized alien.

17.29 **Non-Discrimination**

Contractor shall not unlawfully discriminate against any person in its operation and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Contractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by this Agreement, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Contractor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruiting advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship) and accessibility.

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

ARTICLE 18 – NOTICE

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

For Owner:

Village of Wellington
[Attn: Danielle Zembrzuski](#)
12300 Forest Hill Blvd.
Wellington, FL 33414

For Contractor

CROM, LLC DBA CROM Coatings and Restorations
Attn: Jeffrey Pomeroy
250 SW 36th Terrace
Gainesville, FL 32607

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. One counterpart each has been delivered to Owner, Contractor, and the Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by the Engineer on their behalf.

OWNER: **VILLAGE OF WELLINGTON**

CONTRACTOR: **CROM, LLC DBA
CROM COATINGS AND RESTORATIONS**

By _____
Michael Napoleone, Mayor

By _____
Jeffrey Pomeroy, Manager

Attest: _____
Chevelle D. Hall, Wellington's Clerk

Attest: _____
Printed Name/Title: _____

(SEAL)

(CORPORATE SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Laurie Cohen, Attorney for Wellington

SAMPLE

EXHIBIT "A"
STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT
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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. *Change Order*—A document possibly prepared by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
5. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
6. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
7. *Contract Documents*—Those items so designated in the Agreement. Approved Shop Drawings and other Contractor submittals are not Contract Documents.
8. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement.
9. *Contract Time(s)*—The number of day(s) or the date(s) stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
10. *Drawings*—The Drawings are listed in Exhibit C to the Agreement. Shop Drawings and other Contractor submittals are not Drawings as so defined.
11. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
12. *Engineer*—Design professional
13. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
14. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
15. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
18. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
19. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
20. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

21. *PCBs*—Polychlorinated biphenyls.
22. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
23. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
24. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
25. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents. In no event shall the Project Manual be deemed part of the Contract Documents.
26. *Owner*— Village of Wellington, a Florida municipal corporation, through its Village Council
27. *Owner’s Representative*—Employee of the Village of Wellington who has been authorized to make Project decisions on the Owner’s behalf.
28. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
29. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
30. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
31. *Schedule of Submittals or Submittal Schedule*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
32. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
33. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
34. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
35. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
36. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
37. *Substantial Completion*— Substantial Completion is defined as the time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended and all necessary governmental approvals required for the Owner to utilize the Project for the purposes intended have been obtained. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof. The date is defined in the Contract Documents.

38. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
39. *Unit Price Work*—Work to be paid for on the basis of unit prices.
40. *Construction Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies or may be utilized in the absence of complete agreement on the terms of a Change Order. A Construction Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Construction Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times. Contractor shall be obligated to proceed with all Construction Change Directives pending resolution of a Change Order, if applicable.

1.02 Terminology

A. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 of the General Conditions or any other provision of the Contract Documents.

B. *Day:*

1. The word “day” means a calendar day.

C. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

- D. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the required Public Construction bond in the form attached as **Exhibit “D”** to the Agreement.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor shall deliver to the Owner, with copies to each additional insured, certificates of insurance (and other evidence of insurance which the Owner or any additional insured may reasonably request) which Contractor is required to purchase and maintain in accordance with the Contract Documents.

2.02 Copies of Documents

- A. Upon written request, Owner shall furnish to Contractor up to two printed hard copies of the Contract Documents. Additional copies of the Contract Documents will be furnished upon request at the cost of reproduction.

2.03 Starting the Work

- A. Contractor shall start to perform the Work on the Date of Commencement. No Work shall be done at the Site prior to the Date of Commencement, unless expressly authorized by Owner in writing.

2.04. Intentionally Deleted.

2.05 Before Starting Construction

- A. *Construction Schedules:* Within 30 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Owner for timely review:
 - 1. a construction schedule, otherwise referred to herein as a Progress Schedule, indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents; and
 - 2. a Schedule of Submittals; and
 - 3. a Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include the agreed upon amount of overhead and profit applicable to each item of Work.

2.06 Preconstruction Conference; Designation of Authorized Representatives

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. If not already done so, at this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 Initial Acceptance of Schedules

- A. At least 10 days before submission of the first Application for Payment a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to review for acceptability to Owner/Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an

additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Owner/Engineer. The Progress Schedule shall be in a detailed precedence style critical path management ("CPM") format satisfactory to the Owner and Engineer that shall also: (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). The Contractor shall monitor the progress of the Work for conformance with the requirements of the Progress Schedule and shall promptly advise the Owner of any delays or potential delays. The accepted Progress Schedule shall be updated to reflect actual conditions and as requested by the Owner. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay. Any overtime and/or additional labor to correct the delay shall be at the Contractor's sole expense if the delay is caused in whole or in part by the Contractor, its Subcontractors, or anyone for whom the Contractor is responsible. In no event shall any progress report constitute an adjustment in the Contract Time, Milestone Dates, or the Contract Price unless any such adjustment is agreed to by the Owner and authorized pursuant to written Change Order. Contractor shall maintain such Progress Schedule on a current basis in accordance with the provisions of this paragraph and shall keep proper records to substantiate actual activity, duration and completion dates.

- B. In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents or if the Owner determines that Substantial Completion may be delayed, and provided that the delay was not due to an act or omission caused solely by the Owner, the Owner shall have the right to order the Contractor to take corrective measures, at Contractor's sole cost and expense, necessary to expedite the progress of construction, including without limitation: (i) working additional shifts or overtime in conformity with schedules recognizing the requirements of the Owner, (ii) supplying additional manpower equipment and facilities; and (iii) other similar measures (hereinafter referred to collectively as "Remedial Measures"). Such Remedial Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. If Contractor fails to undertake such Remedial Measures, then after seven (7) days written notice, Owner may undertake such Remedial Measures at Contractor's expense which Owner may, at its election, subtract from amounts due Contractor.
- C. At least 10 days before submission of the first Application for Payment a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to review for acceptability to Owner/Engineer as Schedule of Submittals submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the Schedule of Submittals. No progress payment shall be made to Contractor until acceptable schedules are submitted to Owner/Engineer. Contractor shall maintain and update the Schedule of Submittals as needed and/or required under the Contract Documents.
- D. At least 10 days before submission of the first Application for Payment a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to review for acceptability to Owner/Engineer as Schedule of Values submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the Schedule of Values. No progress payment shall be made to Contractor until acceptable schedules are submitted to Owner/Engineer. Contractor shall maintain and update the Schedule of Values as needed and/or required under the Contract Documents.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

- C. Clarifications and interpretations of the Contract Documents shall be issued by Owner/Engineer as provided in Article 9 of the General Conditions.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect as of the Effective Date of the Agreement, except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall release the Contractor or any of their subcontractors, consultants, agents, or employees of their duties or responsibilities set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies in Contract Documents

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby. Failure to report any such conflict, error, ambiguity, or discrepancy to the Engineer shall result in a waiver of all Claims related thereto.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

B. *Resolving Discrepancies:*

1. The Contract Documents shall be interpreted together and in harmony with one another. In the event of a conflict between or among the Contract Documents or between or among the Contract Documents and any Laws or Regulations, whichever imposes the greater obligation on Contractor or contains the more stringent requirement on the Contractor shall control.

3.04 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Construction Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, so long as there is no impact to the Contract Time or Contract Price, by issuance of a Field Order.

3.05 Reuse of Documents & Electronic Data

- A. Unless otherwise stated in the Contract Documents if there is a discrepancy between the electronic files of drawings and the hard copies of drawings, the hard copies govern.
- B. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.
- C. Before Owner and Contractor transmit documents or data, either personally or electronically, they shall endeavor to establish necessary safeguard protocols governing such transmissions, unless otherwise already provided in the Contract Documents.
- D. Notwithstanding the foregoing, the Owner shall be deemed the author and owner of the Drawings, Specifications, documents and data, including, without limitation, design documents and data prepared on behalf of Owner and provided by Owner to Contractor whether in hard copy or electronic format. As a result, Owner will retain all common law, statutory and other reserved rights, including any and all intellectual property rights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim any rights in such documents or data and may not use said documents and data on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the documents and data provided to them solely and exclusively for execution of the Work. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights
- E. The prohibitions of Paragraph 3.05 D will survive final payment, or termination of the Contract. Contractor shall indemnify and hold harmless the Owner and Engineer from any claims, liabilities and damages including but not limited to reasonable attorney's fees and costs due to any unauthorized use of Drawings, Specifications or documents by Contractor, any Subcontractor, Supplier or any person or entity for which they are responsible. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

- A. Owner shall furnish the Site, Owner shall notify Contractor of any encumbrances or restrictions not of general application but which specifically related to use of the Site of which the Owner is aware and with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities.
- B. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

- A. Reports and drawings were provided to Contractor as part of the Request for Proposal/Invitation to Bid and are attached as part of **Composite Exhibit "C"**.
- B. *Limited Reliance by Contractor Authorized:* Contractor may not rely upon the accuracy of the reports and drawings in **Composite Exhibit "C"**. Contractor shall independently confirm that, in the Contractor's professional judgment, the information is reliable and accurate. Contractor shall have full responsibility with respect to subsurface and physical conditions at or contiguous to the Site, subject to Paragraph 4.03 below. Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any information on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. differs materially from that shown or indicated in the Contract Documents; or
3. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; and
4. is of such a nature as to require a change in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. Contractor may make a Claim for an equitable adjustment to the Contract Price or the Contract Times, or both, to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet the requirements described in Paragraph 4.03.A;
 - b. a Claim is not precluded pursuant to Paragraph 4.02B;
 - c. the Engineer's findings and conclusions support such an adjustment to the Contract Price and/or Contract Time; and
 - d. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of or Contractor, as an experienced and knowledgeable contractor, should have known of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under this Agreement; or

- b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Contract Documents; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner nor Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project or lost profits on this Project.

4.04 Underground Facilities

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
- 1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
 - 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- B. *Not Shown or Indicated:*
- 1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
 - 2. If Engineer concludes that a change in the Contract Documents is required, a Construction Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 Reference Points

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

- A. Reports and drawings of Hazardous Environmental Conditions known to the Owner that have been identified at the Site are attached as part of **Composite Exhibit "C"**.
- B. *Limited Reliance by Contractor:* Contractor may not rely upon the accuracy of the reports and drawings in **Composite Exhibit "C"**. Contractor shall independently confirm that, in the Contractor's professional judgment, the information is reliable and accurate Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications, identified in the Contract Documents to be within the scope of the Work, or which should have been reasonably known to the Contractor. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If

Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7 and the Contract Price shall be reduced by deductive Change Order for the costs incurred by Owner to perform the deleted portion of the Work with Owner's own forces or by others.

- G. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

- A. Contractor shall furnish public construction bond, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents and in the forms attached to the Agreement all in accordance with applicable Florida law. This bond shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents. Contractor's performance bond shall not contain any limitation or exclusion for Contractor's warranty obligations.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 Certificates of Insurance

- A. The Owner and Engineer shall be named as an additional insured in all policies required to be maintained under the Contract Documents, with the exception of the Worker's Compensation insurance, unless

otherwise specified herein. As a condition precedent to entitlement to any progress payment or final payment under the Agreement, Contractor must maintain the required insurance coverage under the Contract Documents at least until final payment unless otherwise specified within the Contract Documents.

Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 Contractor's Insurance

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

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an a Project specific occurrence basis with limits as outlined in the Supplementary Conditions or as required by Laws or Regulations, whichever is greater. Such policies shall include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby. Contractor shall deliver endorsements showing such additional insured coverage using the ISO form CG 20 10 11 85 or its 2004 ISO equivalent (forms 20 10 07 04 and 20 37 07 04) for both ongoing and completed operations;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
 4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 10 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
 5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
 6. include completed operations coverage with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive:
 - a. Such insurance shall remain in effect for one year after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and each year thereafter.
 7. For Worker's Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include Employer's Liability with limits as provided in the Supplementary Conditions.
 8. Business Automobile Liability coverage, required by 5.04A.6, must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:
 - Owned vehicles.
 - Non-owned and hired vehicles.
 9. The policies of Contractor shall contain an endorsement whereby the insurance carriers agree that its insurance is primary and not contributory with or in excess of any coverage which the Owner has purchased. The Contractor shall be responsible for all deductibles under the insurance policies. The Contractor shall be responsible for all loss or damage to the Work, including the Contractor's materials delivered to Site for incorporation therein and all property issued to the Contractor by the Owner for use or incorporation in the Work, except for Owner Direct Purchase which shall be governed by **Exhibit "F"**. The Contractor shall waive all rights against the Owner for recovery of damages to the extent that these damages are covered by insurance maintained pursuant to the above requirements, and the Contractor shall provide all waivers of subrogation in the endorsements and forms required by the Owner.
- C. Intentionally Deleted
- D. Contractor shall procure Professional Liability insurance covering performance of the professional services.
- E. Notwithstanding the availability of any insurance, the Contractor shall bear the risk of loss for its acts, errors or omissions pursuant to this Agreement. The Contractor bears all liability and risk of loss, for losses and damages arising from any acts, errors, omissions, or negligence on the part of the Contractor and its Subcontractors, including without limitation damages for defective and nonconforming work, and the Contractor and all applicable Subcontractors shall bear the risk and pay for such losses regardless of whether the Contractor should be covered for such losses by any insurance required by this Article, except for Owner Direct Purchases governed by **Exhibit "F"**.

5.05 Limits of Liability Insurance. The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

Worker's Compensation, etc., under paragraphs 5.04.A.1 and A.2 of the General Conditions:

- | | | |
|-----|--|--------------------|
| (1) | State: | Statutory |
| (2) | Applicable Federal (e.g. Longshoreman's and Harbour Workers' Compensation, Maritime, Jones Act, etc.): | Statutory |
| (3) | Employer's Liability: | <u>\$1,000,000</u> |

The coverage and the limits of liability for employer's liability are modified to read as follows:

\$1,000,000 each accident
\$1,000,000 disease policy limit
\$1,000,000 disease each employee

Also, the following wording is added governing employer's liability for contractors that are not incorporated or lease employees: If the Contractor is not an incorporated entity (i.e. sole proprietor/partnership), or Leases Employees (under the alternate employer laws of the State of Florida), the Owner shall require a minimum premium policy meeting the aforementioned requirements even though not required by the Worker's Compensation Laws of the State of Florida. Unless and until Contractor provides the Owner with proof of exemption and such forms and proof that the Owner deems appropriate.

Comprehensive General Liability (under paragraphs 5.04.A.3 through A.6 of the General Conditions):

- (1) Including coverage for Premises/Operations Liability on an occurrence basis, Contractual Liability, Independent Contractors, Products/Completed Operations Liability on an occurrence basis, and Personal Injury Coverage with the employee exclusion deleted. The Owner will not accept exclusion for explosion, collapse, or underground in the policy.

Acceptable minimum per project limits are: \$2,000,000 general aggregate

\$1,000,000 products and completed operations aggregate
\$1,000,000 personal injury and advertising injury
\$1,000,000 each occurrence

Coverage shall be on a Primary and Non- Contributory Basis.

- (2) Comprehensive Automobile Liability shall include coverage for owned vehicles, non-owned vehicles, and hired vehicles. Acceptable minimum limits are \$1,000,000 combined single limit for bodily injury and property damage.
- (3) Follow form umbrella liability naming Owner and Engineer as an additional insured, may be purchased and maintained, if necessary, to meet Owners minimum insurance requirements.

The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ or better, in accordance with the latest edition of A.M. Best's Insurance Guide.

5.06 Subcontractor Insurance. All Subcontractors and suppliers shall be obligated to carry insurance commensurate with that required to be carried by Contractor.

Subcontractors and suppliers shall name the Owner and Engineer as an additional insured on all policies including completed operations coverage using the ISO form CG 20 10 11 85 or its 2004 ISO equivalent (forms 20 10 07 04 and 20 37 07 04); which shall also be maintained for a period of one (1) years from completion of the Project.

5.07 Acceptance of Bonds and Insurance; Option to Replace

- A. Owner shall review the coverage afforded by or other provisions of the insurance required to be purchased or maintained by Contractor after delivery of insurance certificates to Owner in accordance with Paragraph 2.01B of the General Conditions. Contractor shall furnish to the Owner such additional information in respect to insurance provided by Contractor as the Owner may reasonably request. Review of Insurance Policies or Insurance Certificates by the Owner shall not relieve or decrease the liability of the Contractor hereunder. In case of a breach by Contractor of any insurance provision stated in the Contract Documents, the Owner at its option may take out and maintain, at the expense of the Contractor, such insurance as the Owner may deem proper and Owner may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this Contract. All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by Contractor shall contain the name of the Project.

5.08 Partial Utilization, Acknowledgment of Property Insurer

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.04 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 Supervision

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Engineer and shall not proceed with that portion of the Work without further written instructions from the Engineer. If the Contractor is then instructed in writing by the Owner and Engineer to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.
- B. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- C. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor’s representative at the Site and shall have the authority to act on behalf of the Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

6.02 Labor; Working Hours

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be

performed Monday through Friday, 7:00 a.m. till 5:00 p.m., excluding holidays, and shall comply with the Village of Wellington's Noise Ordinance. Contractor will not permit overtime work or the performance of Work on a Sunday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions and warranties of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

- A. Contractor shall adhere to the Schedule established in accordance with Paragraphs 2.05 and 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Owner/Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply generally to the Progress Schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto;
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 Substitutes and "Or-Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
 - 1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.

- b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved in writing by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order. Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 Concerning Subcontractors, Suppliers, and Others

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

- D. Owner or Engineer may furnish to any such Subcontractor, Supplier, or other individual or entity, to the extent practicable, evidence of amounts paid to Contractor in accordance with Contractor's Application for Payment.
- E. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- F. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- G. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the work to be performed by any specific trade.
- H. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. The agreement(s) between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same. It is further agreed that all subcontracts and material and equipment purchase contracts entered into by Contractor or its subcontractors or material suppliers, shall contain a provision stating that the Owner may bring Claim(s) directly against any subcontractor of Contractor for breach of Contract, warranty rights, quality of workmanship, and create third party beneficiary rights of Owner in said agreements. Additionally, nothing contained in this Contract shall constitute an assignment of Contractor's rights against the Owner or create any third party beneficiary rights in any subcontractors or material and equipment suppliers of Contractor. The purpose of this provision is to allow the Village, in addition to Contractor, to make claim for damage or indemnification directly against any subcontractors or material and equipment suppliers that may be ultimately responsible for defects or deficiencies in the Work or materials and equipment. Further, to the extent requested by Owner, Contractor shall deliver copies of all Subcontract and Supplier agreements, purchase orders and invoices to Owner.

6.07 Patent Fees and Royalties

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. [Paragraph intentionally left blank.]
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents. Nothing herein shall be construed or interpreted as consent by the Owner to be sued, nor as a waiver of sovereign immunity beyond the waiver and limits provided in §768.28, Florida Statutes.

A. Intentionally Deleted.

6.09 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known as of the Effective Date of the Agreement having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work. Sales Tax shall be paid in accordance with the Sales Tax Recovery Program Special Conditions when applicable, as determined by the Owner and/or Engineer.

6.11 Use of Site and Other Areas

A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
 3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work. Nothing herein shall be construed or interpreted as consent by the Owner to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work, Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

- C. Prior to Substantial Completion of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents. If Contractor fails to keep the Site and other areas clean on a daily basis and/or as a condition to Substantial Completion, Owner shall have the right to deduct costs incurred by Owner to keep the Site and other areas clean and free from accumulations of waste.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property including but not limited to property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at no additional cost to the Owner or Engineer.
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

G. Contractor shall comply with the Trench Safety Standards provided by OSHA's Excavation Safety Standards, 29 CFR §1926.650 Subpart P and Fla. Stat. §553.60-§553.64 (1990) (inclusive).

6.14 Safety Representative

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available at the Site in accordance with Laws or Regulations.

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Construction Change Directive or Change Order will be issued.

6.17 Shop Drawings and Samples

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

- a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

- b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 Continuing the Work

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Contractor warrants to Owner that all materials and equipment furnished for the Project will be new unless otherwise specified and that all Work for the Project, will be of first quality, free from faults and defects, fully functional, and in conformance with the Contract Documents. The Work shall be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Contractor's warranty and the warranty of all Subcontractors and suppliers shall be for a period of one (1) year from date of substantial completion or longer, as may be stated in an Extended Warranties. All Work for the Project not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor shall, within three (3) working days of written notice from Village, correct any Work that fails to conform to the requirements of the Contract Documents and unconditionally guarantees and warrants that it shall correct at its sole cost and expense any defects due to faulty materials, equipment and/or workmanship which appear within a period of one (1) year from the date of substantial completion or such longer time required by the Contract Documents for particular items (the "Extended Warranties"). The Contractor shall bear all costs of correcting such defective work. Contractor and Subcontractor warranties expressly also include all statutory warranties, all of which are specifically and expressly incorporated herein by reference. The Contractor shall also provide warranties from manufacturers for the specified items and systems within the Contract Documents and may include Extended Warranties. Notwithstanding anything set forth in the Manufacturers' Warranties to the contrary, those items specifically covered by the Manufacturers' Warranties and any disclaimers and limitations on liability shall in no way be deemed to limit Contractor's warranties and liability herein and are in addition to and not in lieu of the Contractor's warranties. These obligations shall survive termination of this Agreement. If Contractor should default in the performance of any of its warranty obligations, it shall be responsible for all damages, fees or costs incurred by the Owner in enforcing the warranty provisions of this Article, including, but not limited to, all attorney's fees, engineering and consulting fees or other expenses incurred. Without limiting the generality of the foregoing, if any warranty repairs are not performed within the specified time, emergency repairs performed by others shall not void the warranty and the Contractor shall reimburse the Owner for all costs incurred in connection with the performance of such repairs. This warranty is in addition to and not in lieu of any other warranties, express or implied, which may be provided by Laws and Regulations.
- B. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Owner or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any acceptance by Owner or any failure to do so;
 6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.

6.20 Delegation of Professional Design Services

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.20, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 Related Work at Site

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 Coordination

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 Legal Relationships

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 Communications to Contractor

- A. The Owner will serve as the Owners Representative. All communication relative to Contractor's obligation under Agreement shall be through the Owner.

8.02 Replacement of Engineer

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 Furnish Data

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents, including, without limitation, (i) geotechnical engineering survey; (ii) other applicable land surveys; (iii) environmental studies of existing facilities; and (iv) all applicable reports regarding water intrusion and contamination, all of which are attached as **Composite Exhibit "C"**. Unless otherwise provided for under the Contract Documents, the Owner shall provide said information in a timely manner and Contractor shall not rely on such information without independently confirming that, in the Contractor's professional judgment, the information is reliable and accurate.

8.04 Limitations on Owner's Responsibilities

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

8.05 Evidence of Financial Arrangements

- A. Upon written request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.06 Compliance with Safety Program

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable

requirements of Contractor's safety programs of which Owner has been informed in writing in accordance with the Contract Documents.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 Owner's Representative

- A. The Owner will serve as the Owners Representative. All communication relative to Contractors obligation under Agreement shall be through the Owner.
- B. The Owner will act as the Engineer during construction unless otherwise notified by Owner.

9.02 Visits to Site

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will advise the Owner of any defective or non-conforming Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE (the "Listing") which will be distributed to Contractor and , as provided in Paragraph 9.09. If any conflicts exist between the Listing and Paragraph 9.09, the terms and conditions of the Listing shall govern. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as presented at the Pre-Construction Meeting.

9.04 Authorized Variations in Work

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, Contractor shall so notify Owner in writing within five (5) business days of receipt of the Field Order, and if the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 Rejecting Defective Work

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will

prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed. Owner shall also have the same rights as Engineer to reject Work which it believes to be defective, which it believes will not produce a completed Project that conforms to the Contract Documents, or which it believes that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

9.06 Shop Drawings, Change Orders and Payments

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 Determinations for Unit Price Work

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 Decisions on Requirements of Contract Documents and Acceptability of Work

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 14 days of the event giving rise to the question.
- B. In no event, shall Contractor cease performance of the Work as the result of referring a matter to the Engineer regarding or relating to the acceptability of the Work and/or the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work.
- C. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05.
- D. Engineer's written decision on the issue referred will be neither final nor binding on Owner and Contractor, and is subject to the provisions of Paragraph 10.05.
- E. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 Limitations on Engineer's Authority and Responsibilities

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 Compliance with Safety Program

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Construction Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Construction Change Directive, a Claim may be made therefor as provided in Paragraph 10.05, but Contractor shall be required to perform the Work and Owner shall be required to continue to make undisputed payments under the Contract Documents.
- C. Any changes in the Work or any adjustment in the Contract Price or the Contract Time shall only be made upon written Change Order or Construction Change Directive as provided herein. If Contractor proceeds with such work without obtaining a written Change Order or Construction Change Directive, it shall be assumed that Contractor has performed such work at no additional charge. The requirement for writing under this Article cannot be waived

10.02 Unauthorized Changes in the Work

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, authorized by written Change Order or Construction Change Directive, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 Execution of Change Orders & Construction Change Directives

- A. A Change Order shall be based upon agreement between the Owner and Contractor and approved by Engineer, based on auditable documentation of the costs incurred, if any, and shall be executed upon any of the following:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Construction Change Directive; and
 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05 if agreed to by the parties.
- B. Among other circumstances, a Construction Change Directive may be issued where the Contractor believes it is entitled to a Change Order or otherwise to an increase in the Contract Price or Contract Time, but the Owner does not agree or if the parties cannot agree on the amount or duration of any change to the Contract Price or Contract Time. In such event, the Contractor is obligated to perform the Work described in the Construction Change Directive in accordance with this Paragraph. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive. A Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Price or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Contract Price and Contract Time being adjusted accordingly.
1. If the Construction Change Directive provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods:
 - a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - b. Unit prices stated in the Contract Documents or subsequently agreed upon;
 - c. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 - d. As provided in Article 11.
 3. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner and Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Price or Contract Time. Disagreement as to the adjustment to the Contract Price or Contract Time shall not excuse Contractor from its prompt performance of the Work described in the Construction Change Directive.
 4. A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
 5. Deductions of Work ("Deductive Change Orders"). The Owner reserves the right to remove any items from the scope of Work in the Contract Documents by Deductive Change Order. Such deduction shall be determined by the Engineer using the Contractor's Schedule of Values. The deductions, if any, shall not be considered a cardinal change to the Agreement. The parties hereto recognize that the Owner has materially relied on this provision in entering into contract with Contractor. Such value deduction shall be conclusive as it relates to utilizing the Contractor's Schedule of Values.

10.04 Notification to Surety

- A. Any bonds issued in connection with the Work shall contain a provision that surety waives notices of any changes to the Contract Documents. However, to the extent any notice of any changes to the Contract Documents requires notice to any surety, the giving of any such notice will be Contractor's responsibility.

The amount of each applicable bond shall automatically be adjusted to reflect the effect of any such change.

10.05 Claims

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09 of the General Conditions, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims, unless Engineer fails to render a decision in the time periods required by the Contract Documents.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 14 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 30 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.A. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.A. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- C. *Engineer's Action:* Engineer will review each Claim and, within 14 days after receipt of the last submittal of the claimant or the last submittal of the opposing party if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 14 days, the Claim shall be deemed denied.
- E. Engineer's written decision shall not be binding on the parties unless expressly agreed to by the parties.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 –ALLOWANCES & UNIT PRICE WORK

11.01 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents as part of **Exhibit "G"** and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer. Unless otherwise provided in the Contract Documents:
1. allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;
 2. Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, general conditions, insurance, bonds and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances; and

3. whenever costs for the actual allowance item (materials and equipment) are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under this Paragraph and (2) changes in Contractor's costs.

Contractor shall notify Owner to make selection of materials and equipment under an allowance in sufficient time to avoid delay in the Work.

11.02 Contingency

- A. Any contingency listed in the Schedule of Values (the "Contingency") may only be utilized by the Owner, in its sole discretion, for any purpose, including, but not limited to covering unanticipated costs in the Work. The Contractor shall not be entitled to use the Contingency without the prior written approval of Owner, which may be withheld in its sole discretion. In no event shall the Contingency be used for the Contractor's gross negligence; for costs reasonably recoverable from insurance, subcontractors, supplier or sureties; for funding punch list work; for funding the coordination of subcontractors and other entities; for resolving conflicts in the field; for funding costs incurred as a result of a default on the part of Contractor unless Owner approves in writing, or for any other direct costs of performance not approved in writing by Owner. Any Contingency that is not used (the "Contingency Savings") will accrue 100% to the Owner and shall result in a credit to Owner and result in a reduction towards the outstanding balance of the Contract Price.

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract Documents.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Contractor may not make a Claim in accordance with paragraph 10.05 for additional expenses incurred as a result of a difference between final quantity of any item(s) of Unit Price Work and the estimated quantity of such item(s) in the Contract Documents. Owner may make a claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if the Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of such decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

12.02 Change of Contract Times

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

12.03 Delays

- A. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Time, if such delay results in an impact to the critical path of the schedule as determined by Engineer. Such an adjustment in the Contract Time shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03. Claims for abnormal weather conditions shall be documented by data substantiating the weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. No extension of the Contract Time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last five (5) years of weather recorded by the Owner. The parties agree that time is of the essence in the performance of this Agreement.
- B. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- C. Contractor shall not be entitled to an adjustment in Contract Price or Contract Time for delays within the control of Contractor, any Subcontractor, Supplier or any other person or entity for which Contractor is responsible.
- D. NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST OWNER BY REASON OF ANY DELAYS. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Owner for direct, indirect, consequential, impact or other costs, expenses, or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable, or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delays, in accordance with and to the extent specifically provided herein.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

- A. Notice of all defective Work of which Owner has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests over the Work and Site will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

- A. Contractor shall give no less than forty-eight hours notice to Engineer and Owner for all required inspections, tests, or approvals, except as otherwise provided, and shall cooperate with inspection and testing personnel to facilitate required inspections, tests or approvals.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 3. for inspection, tests, or approvals due to defective or non-conforming Work, or as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

13.04 Uncovering Work

- A. If any Work (or the work of others) that is to be inspected, tested, or approved pursuant to Paragraph 13.03 above, is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Uncovering Work shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.
- B. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- D. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- E. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 Owner May Stop the Work

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them. Notwithstanding the foregoing, any stoppage ordered in the Work by Owner, shall not result in a Claim for

an increase in the Contract Price or Contract Time by Contractor.

13.06 Correction or Removal of Defective Work

- A. Within three (3) days after receipt of written notice from the Engineer, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineer, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or
 - 2. correct such defective Work; or
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed, or for the remaining period of time of any applicable special guarantee by the Contract Documents, whichever is longer.
- D. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not

otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 Owner May Correct Defective or Non-conforming Work

- A. If Contractor fails within three (3) days after written notice from Engineer to correct defective or non-conforming Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs and all costs for acceleration, additional forces or overtime) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. Further, Owner's exercise of its rights under this Article shall not be construed to be a waiver of liquidated damages for delay and shall be in addition to any other or further remedies available Owner under the Contract Documents.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

- A. The Schedule of Values established pursuant to Paragraph 2.05.A of the General Conditions will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Owner/Engineer.

14.02 Progress Payments

- A. *Applications for Payments:*

- 1. At least 20 days before the date established in the Agreement for each progress payment to be paid by Owner (but not more often than once a month), Contractor shall submit to Engineer and Owner for review an Application for Payment on AIA forms G702 and G703 and filled out and signed by Contractor based on the completion and progress of the project, and for Unit Price Work, based on the number of units completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. For the Unit Price Work, Contractor shall not be entitled to payment for the performance of any quantities of the Unit Price Work unless prior to performing same the quantities are verified and approved, in writing, by the Engineer. If the Contractor proceeds with any Unit Price Work without obtaining the prior written approval of the Engineer, the Contractor shall not be entitled to payment for the performance of such Unit Price Work. If payment is requested on the basis of materials and equipment not

incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner. Notwithstanding the foregoing, each Application for Payment shall show a complete breakdown of the Project components, the quantities completed and the amounts due, together with such data substantiating the Contractor's right to payment and such supporting evidence which may be requested by the Engineer or Owner including, but not limited to: (a) all Subcontractor requisitions; (b) where required by any manufacturers for extended warranties, inspection certificates or other acceptable documentation confirming the acceptable completion of any and all required inspections for the Work performed for which payment is being made; (c) all monthly reports required by any federal, state or local requirements including.

2. In addition, as a further condition to payment of each progress payment, Contractor shall: (i) submit partial release of lien from Contractor for the current Application for Payment, submit partial releases of lien from all laborers, material suppliers and Subcontractors through the date of the last payment made, and such other evidence that the Owner may reasonably require substantiating that all Work which is the subject of each such Application for Payment has been performed. The releases of lien form shall conform to the Florida's Construction Lien Law 713.01 et. seq. and/or Fla. Stat. § 255.05, and shall be in such forms as approved by the Owner. An updated Progress schedule shall be submitted at least monthly to the Owner and Engineer. Submission of the updated Progress schedule shall not serve as notice of delays and shall not be construed as Owner's consent to extensions of the Contract Time. Each Application for Payment shall be submitted in triplicate to the Engineer for approval.
3. Beginning with the second Application for Payment, each Application of Payment shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work, have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment. Commencing with the second Application for Payment, each Application for Payment shall also include unconditional partial releases of lien from all laborers, material suppliers and Subcontractors covering the prior progress payment to Contractor.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement and shall be in accordance with Florida law.

B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application for Payment to Owner or return the Application for Payment to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application for Payment.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated in the most recent Progress Schedule;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment, Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work of Contractor;
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A;
 - e. Claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor;
 - f. Failure of Contractor to make payments properly to Subcontractors or suppliers or for material or labor;
 - g. Damage to the work of another Contractor, Subcontractor, supplier, materialmen, party, or person not remedied;
 - h. Liquidated damages pursuant to Article 4.2 and 4.3 of the Agreement; and
 - i. Any other breach of the Agreement by Contractor.

C. *Payment Becomes Due:*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation or no later than the 10th day of the following month, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.
2. When the Contractor herein receives payment from the Owner for labor, services or materials furnished by subcontractor and suppliers hired by the Contractor, the Contractor shall remit payment due those parties within ten (10) days after receipt of payment from the Owner, unless otherwise provided for by Florida Law. Further, when a subcontractor receives payment from the Contractor for labor, services, or materials furnished by subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers within 7 days after the subcontractor's receipt of payment.
3. The receipt of each progress payment by Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee, except for those expressly made in writing by that payee as disputed and unsettled at the time of the subject progress payment.

D. *Reduction in Payment:*

1. Owner may refuse to make payment of the full or any amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. For any of the reasons which the Engineer may withhold or reduce certification of payment pursuant to Article 14.02(B)(5) or Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full or any amount recommended by Engineer, Owner will give Contractor written notice within three (3) days of receipt of Engineer's certification (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action. Any amount withheld by Owner shall not give rise to a reason or justification for Contractor to stop performing the Work, provided Owner complies with the notice requirement stated herein and pays any undisputed amounts.
3. The Owner may, but shall not be obligated to, upon the issuance of a notice of non-payment by a Subcontractor, supplier or materialmen, or any other lienor, or claimant as defined by §255.05, Florida Statutes, make all or any portion of any progress payment by check payable jointly to the order of Contractor and any lienor giving timely notice, or may make such payment directly to such lienor and deduct said sum from the balance then due Contractor. However, such payment, if made, shall not create any third party beneficiary or other rights in such lienor or claimant. In making such payments to lienors or claimant, the Owner shall require such lienor or claimant to execute the applicable release of lien or the Waiver of Right to Claim Against Bond form in accordance with §255.05, Florida Statutes.

14.03 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 Substantial Completion

- A. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use and that the following minimum requirements are met:
1. The Work is complete, ready for occupancy, and all persons or entities having jurisdiction over the Project have issued the appropriate permits, authorizations, and temporary certificates of occupancy for the Project, and the Work has passed all necessary inspections;
 2. The exterior elements, such as Site cleanup and restoration (including without limitation removal of all excess materials, rock, sand, paving, debris, supplies, equipment, temporary structures, and trailers), paving, parking, landscaping and exterior building finishes, the interior spaces and finishes of the Work and all mechanical, electrical, plumbing and technical systems required by the Contract Documents, fire and life safety systems, are complete and fully operational and are ready for occupancy, the Contractor has submitted the Contractor's punch list with respect to such items and they have been inspected and approved by the Engineer and Owner as to scope, number, and content;
 3. All warranties required by the Contract Documents have been delivered to Owner;
 4. All equipment manuals and operational videos have been delivered to Owner and training by Contractor of Owner's staff is complete; and
 5. The Owner has issued the Certificate of Substantial Completion, based on recommendation of Engineer concurrence that the required conditions has been satisfied.
- B. When Contractor considers the entire Work ready for its intended use and all other requirements of Article 14.04A. have been satisfied, Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Owner issue a certificate of Substantial Completion. The Owner may, at its sole discretion, accept portions of the Project separately, in which event the applicable parts of this Article 14.04A. shall apply to such portions of the Project;
- C. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- D. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a recommendation for approval of Substantial Completion. There shall be attached to the recommendation a list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the engineer's recommendation during which to make written objection to Engineer as to any provisions of the recommendation or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the their recommendation to Owner, notify Contractor in writing, stating the reasons therefor and revise the final punch list accordingly. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Contractor must complete all punch list items to the satisfaction of the Owner prior to Final Payment.
- E. At the time of delivery of the engineer's recommendation for Substantial Completion, Engineer will clarify to Owner and Contractor as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.
- G. Final Punch List. In accordance with Section 218.70, Florida Statutes, following Substantial Completion, the Owner, Contractor and Engineer shall work together to supplement and finalize a list of items required

to be completed for final completion of the Project, and the estimated cost to complete each item on the list, within the following time frames:

1. For construction projects having an estimated cost of less than \$10 million, within 30 calendar days after reaching Substantial Completion of the Work; or
2. For construction projects having an estimated cost of \$10 million or more, within 30 calendar days, or, if extended by contract, up to 45 calendar days after reaching Substantial Completion of the Work.

Within five days after the punch list has been developed, Contractor shall deliver a copy of the list to Owner and Engineer. The failure to include any corrective work or pending items not yet completed on the final punch list or any punch list does not alter the responsibility of the Contractor to complete all of the Work in accordance with the Contract Documents. Within 20 business days after the final punch list is created, the Owner shall pay the Contractor the remaining contract balance that includes all retainage previously withheld less an amount equal to 150 percent of the estimated cost to complete the items on the final punch list. Contractor shall complete the final punch list items within the time periods specified above. Upon completion of all items on the final punch list, the Contractor may submit a payment request for the amount withheld by the Owner. If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to the Contract, the Owner may continue to withhold up to 150 percent of the total costs to complete such items.

14.05 Partial Utilization

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04 for that part of the Work.
 2. With Owner's approval, Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work. However, in no event shall Owner or Engineer be obligated to deem a portion of the Work substantially complete or otherwise partially accept the Work. Owner may seek partial occupancy or use whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Contract Documents.
 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.08 regarding property insurance.

14.06 Final Inspection

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in

writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 Final Payment

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified in the final punch list and during the final inspection has delivered, in accordance with the Contract Documents, all maintenance and operating instructions not previously delivered, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled;
 - d. complete and legally effective final releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work;
 - e. an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
 - f. the final certificate of occupancy and all final governmental and utility authority permits have been issued;
 - g. Contractor has delivered to Owner all previously undelivered manufacturer and Subcontractor guarantees and warranties, and/or instruction manuals for appliances and equipment;
 - h. Contractor has delivered to Owner and Engineer all shop drawings, revised plans and final, complete and coordinated "as built" drawings in CAD and hard copy for the Work [including, without limitation, structural drawings, mechanical drawings (e.g., plumbing, air conditioning, fire sprinkler, etc.) and electrical drawings] detailing all changes or deviations from the original design;
 - i. Contractor has fully cleaned and restored the Site with respect to all of the final punch list work;
 - j. all temporary utilities are disconnected; and
 - k. Contractor has complied with all other requirements of the Contract Documents and all requirements of Owner.
3. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and

Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

2. Owner may withhold final payment to such extent as may be necessary on account of:
 - a. Defective Work not remedied;
 - b. Claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor;
 - c. Failure of Contractor to make payments properly to Subcontractors or suppliers or for material or labor;
 - d. Damage to another contractor, subcontractor, supplier, materialmen, party, or person not remedied;
 - e. Liquidated damages;
 - f. As-built drawings not being in current and acceptable state; and/or
 - g. Any other breach of this Agreement by Contractor.
3. When the above grounds are removed or resolved or Contractor provides a surety bond or a consent of surety satisfactory to Owner, which will protect Owner in the amount withheld, payment may be made in whole or in part, as applicable.

C. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 Final Completion Delayed

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

- A. The making of any payment, including final payment, shall not constitute a waiver of claims by the Owner or a waiver of any of Contractor's continuing obligations.
- B. Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer. Contractor shall resume the Work Upon written notification from Owner. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor's failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of or failure to comply with Laws or Regulations of any public body having jurisdiction or the authority of the Engineer;
 3. Contractor's failure to make payment to Subcontractors for services, materials or labor in accordance with the respective agreements;
 4. Contractor is otherwise guilty of a material breach of a provision of the Contract Documents;
 5. Contractor shall institute proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable federal or state law, or if a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing;
 6. Contractor admits in writing his inability to pay his debts generally as they become due, or if the Contractor makes a general assignment for the benefit of his creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of his bankruptcy or insolvency; and
 7. Contractor submits an Application for Payment, sworn statement, waiver of claim, affidavit or document of any nature whatsoever which is intentionally falsified.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor and its surety shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their

reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Owner, in its sole discretion, may choose not to terminate Contractor's services if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 15 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a public construction bond, that bond shall incorporate the provisions of this Agreement.

15.03 Owner May Terminate For Convenience

- A. The Owner may terminate this contract for convenience upon providing Contractor fourteen (14) days written notice of the same. If this Contract is terminated as provided herein, the Contractor shall be paid for all completed and acceptable Work executed and allowable and proven demobilization expenses incurred due to such termination. Payment shall include services actually performed in full prior to termination date, but shall exclude all lost profits, direct, indirect, consequential, special damages, or other damages for the remainder of the Project.

If a court of competent jurisdiction finds that the Owner wrongfully terminated this Contract, then in such event, this Contract shall be deemed terminated for convenience as provided for in this Paragraph 15.03A., and the Contractor shall not be entitled to damages or loss of profits, consequential, indirect, or special damages, but may be entitled to all items as authorized herein.

15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon fourteen (14) days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner for call completed and acceptable Work executed and allowable and proven demobilization expenses as a result of such termination, but in no event shall Contractor be entitled to any lost profits, overhead, direct, indirect, consequential special damages or other damages for the remainder of the Project.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 –

16.01 [This paragraph intentionally left blank].

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed

to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, Federal Express or other similar carrier with signature required to the last business address known to the giver of the notice.

17.02 Computation of Times

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by Contractor, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 Controlling Law

- A. This Contract is to be governed by the law of the State of Florida. Any legal proceeding arising from the Contract Documents shall be brought only in a court of competent jurisdiction in Palm Beach County, Florida.

17.06 Headings

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

END OF SECTION

EXHIBIT "D"

Public Construction Bond

Bond No.: _____

Project No.: _____

BY THIS BOND, We _____, a corporation whose principal business address and telephone number are _____ as Principal and _____, a corporation whose principal business address and telephone number is _____, as Surety, are bound to the **Village of Wellington**, herein called Owner, in the sum of \$ _____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

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

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

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

DATED ON _____, _____

PRINCIPAL _____

(A Florida Corporation, licensed to do business in Florida)

ADDRESS _____

(Signature of President or Vice President)

BY: _____ Typed Name, Title: _____

ATTEST:

(Signature of other corporate officer)

BY: _____ Typed Name, Title: _____

(Corporate Seal) (if available)

(SURETY SIGNATURE BLOCK)

_____, SURETY (Type Name)

ADDRESS: _____

BY: _____

(Signature)

Type Name: _____, its attorney-in-fact

(Power of Attorney must be attached)

WITNESS SIGNATURE: _____ PRINTED NAME: _____

WITNESS SIGNATURE: _____ PRINTED NAME: _____

IMPORTANT: Surety companies executing this Bond must appear on and have sufficient bonding capacity per the Treasury Department's most current list (circular 570 as amended) and be authorized to transact business in the State of Florida.

SAMPLE

EXHIBIT "F"

SALES TAX RECOVERY PROGRAM SPECIAL CONDITIONS
FOR OWNER FURNISHED MATERIALS AND EQUIPMENT

During the course of this Project, Wellington (hereinafter referred to as "Owner") may issue a Change Order or Change Orders to delete from the contract certain items that the Owner desires to purchase directly and furnish to Contractor for use in the Project. Contractor agrees that if Owner desires to issue such Change Order(s), Contractor will assist the Owner in identifying appropriate materials and equipment to be included in the Change Order(s), will execute such Change Order(s) and will participate in this tax savings program at no additional cost to the Owner. Furthermore, Contractor agrees to abide by and comply with the following Special Conditions.

1. Sales and Use Taxes. The Owner is exempt from paying sales and use taxes on materials and equipment purchased for, and incorporated into the "Project". The Owner shall make direct purchases of all materials and equipment purchased for, or to be incorporated into the Project, as agreed to by the Contractor and agreed upon by the Owner in the form of a Change Order. All direct purchases of materials and equipment shall be made by the Owner with funds specifically allocated for the construction of the Project. Material suppliers shall be competitively bid by the Contractor and its subcontractors. The Contractor shall furnish to Owner with its bid a detailed list of all materials, equipment and supplies necessary for Contractor to perform the Work ("Materials and Equipment List"). The Materials and Equipment List shall: (1) Identify all of the materials and equipment to be purchased by or through Contractor as part of the Work in such detail as may be required to adequately identify the materials and equipment; (2) Include the name of each intended supplier, vendor or manufacturer of the materials and equipment necessary for Contractor to perform the Work; and (3) include price quotes from all intended vendors, suppliers, or manufacturers of all construction materials and equipment necessary for Contractor to perform the Work. This Materials and Equipment List shall be submitted as part of the Contractor's Bid, and as part of the preliminary Schedule of Values. The Contractor shall notify the Owner no later than **10 calendar days** after request by Owner of the requested materials and equipment to be purchased by the Owner for the Project. The standard Owner Terms and Conditions applicable to this program are included as Attachment A to this section. Each equipment supplier of equipment to be provided under the Sales Tax Recovery Program shall be obligated to meet the requirements of the Owner of Wellington Terms and Conditions and the Project Technical Specifications.
 - 1.1 The Contractor shall: (a) compile Contractor's and any Subcontractors' itemized requirement for materials and equipment, including quantities, unit costs, manufacturers' or vendors' catalogue or order numbers, delivery instructions, and other specific terms and information that are required to order the specific materials and equipment, and terms and conditions to be imposed on suppliers regarding delivery and submittal time requirements, and quantities thereof required by Contractor or Subcontractors in accordance with the applicable requirements of the Construction Contract, from time to time, during the construction of the Project, as materials and equipment need to be ordered for the Project, and submit such compilation to the Owner; (b) prepare a requisition for such materials and equipment on the Owner's form of requisition; and (c) deliver any such requisition to the Owner no less than thirty (30) days prior to the date the manufacturer or vendor of the materials or equipment, as the case may be, requires orders for such materials or equipment to be placed to assure delivery of such materials or equipment to the Site in accordance with the Project Schedule (the "Order Date"). The requisition shall identify the Order Date. The Owner shall issue a Purchase Order directly to the vendor of the materials or equipment, prior to the Order Date (a Purchase Order). The Owner shall include with any such Purchase Order, a copy of the Owner's sales and use tax exemption certificate and a copy of the Owner's Certificate of Entitlement required under F.A.C. Rule 12A-1.094(4)(c). The Owner shall make direct payment to the vendor from the Owner's account.
 - 1.2 The Contractor, upon the delivery of any such materials or equipment, shall verify the conformity of such materials or equipment with the terms of the Purchase Order and the Contract Documents. If the Contractor determines that the materials and equipment are conforming, the Owner shall take title and possession of such material and equipment before such materials and equipment are incorporated into the Project. If the Contractor determines that the materials and equipment are non-conforming, the Contractor shall immediately notify the Owner in writing and the Owner shall reject such material and equipment.
 - 1.3 The Owner shall assume all risk of loss on all materials and equipment purchased pursuant to its sales and use tax exemption, subject to the provisions of section 1.10 below. The Owner or

Contractor shall maintain Builder's Risk Insurance for the full insurable value for all materials and equipment purchased as a result of the Owner Sales Tax Recovery Program herein. This coverage shall be in addition to all other coverage required in Section 1.11 below or as otherwise provided in these Contract Documents.

- 1.4 To the extent that materials and equipment are purchased pursuant to the Owner's sales and use tax exemption, the Contractor shall reduce the Contract Amount and the penal sum of its public construction bond by 1.07 times the cost of the materials and equipment purchased directly by the Owner.
- 1.5 **Savings and Overruns.** The Contractor shall use its best efforts to purchase all materials and equipment required as part of the Work at the best price. All buyout savings realized from the purchase of materials and equipment shall inure 100% to the benefit of the Owner. Owner shall not be obligated to pay any additional amounts should the actual cost of the materials, equipment or supplies to be furnished as part of Contractor's Work, exceed the amounts set forth on the Materials and Equipment List.
- 1.6 The Contractor shall be fully responsible for all matters relating to the receipt of materials and equipment furnished by the Owner in accordance with this Special Condition, including, but not limited to, the responsibility for verifying correct quantities, verifying documents or orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the materials and equipment at the time of delivery, and loss or damage to materials and equipment following acceptance of items due to the negligence of such Contractor or any Subcontractors or other party. The Contractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by such Contractor for the particular materials and equipment furnished. The Contractor shall provide or arrange for all services required for the unloading, handling and storage of such materials and equipment through installation.
- 1.7 The Contractor shall visually inspect all shipments from material and equipment vendors purchased directly by the Owner in accordance with this Special Condition (the "Owner Furnished Materials") and approve the vendors' invoices for materials or equipment delivered, as Owner Furnished Materials are furnished to the Site in accordance with this Special Condition. The Contractor shall assure that each delivery of the Owner Furnished Materials is accomplished by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the vendor conforming to the Purchase Order, together with such additional information as the Owner may require. The Contractor shall deliver to the Owner all invoices for materials and equipment upon verification by such Contractor that the materials and equipment conform exactly to the Contract Documents and the Purchase Order. Upon receipt of any invoice for Owner Furnished Materials, the Owner shall accept such materials and deliver such invoice to the Owner for payment directly to the vendor.
- 1.8 The Contractor shall inspect all Owner Furnished Materials to determine that such Owner Furnished Materials conform to the Contract Documents, including the Drawings and Specifications, and to determine prior to incorporation into the Work whether any such Owner Furnished Materials are patently defective, and whether such Owner Furnished Materials are identical to the materials ordered and match the description of the bill of lading and the Purchase Order. If Contractor discovers defective or non-conforming Owner Furnished Materials upon such visual inspection, Contractor shall: (1) not recommend acceptance of such non-conforming materials and equipment, (b) not utilize such non-conforming or defective materials in the Work; (c) not allow Subcontractor to utilize such non-conforming or defective materials in the Work; and (d) promptly notify the Owner, in writing, of the defective or non-conforming condition so that repair or replacement of those Owner Furnished Materials can occur without any undue delay or interruption to the Project. In the event that such Contractor fails to perform such inspection or otherwise incorporates into the Work such defective or non-conforming Owner Furnished Materials, the Contractor shall be responsible for the repair and replacement of defective or non-conforming materials, at its sole cost and expense.
- 1.9 The Contractor shall maintain written and detailed records of all Owner Furnished Materials

incorporated into the Work from the stock of Owner Furnished Materials. The Contractor shall account monthly to the Owner for any Owner Furnished Materials delivered to the Site, indicating which Owner Furnished Materials have been incorporated into the Work.

- 1.10 The Contractor shall be responsible for obtaining and managing all warranties and guarantees for all Owner Furnished Materials. All repair, maintenance or damage-repair calls shall be forwarded by the Owner to the Contractor for resolution with the appropriate vendor, supplier or Subcontractor. The Contractor warrants represents and covenants that it shall be responsible for all warranties and guarantees of the Owner Furnished Materials.
- 1.11 After the Owner takes possession of the Owner Furnished Materials at the Site, possession of the Owner's Furnished Material shall immediately and automatically transfer to the Contractor without notice. The transfer of possession of Owner Furnished Materials from the Owner to the Contractor shall constitute a bailment for the mutual benefit of the Owner and such Contractor. The Owner shall be considered the bailor and such Contractor the bailee of the Owner Furnished Materials. Owner Furnished Materials shall be considered returned to the Owner for purposes of their bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project and they are accepted in writing by the Owner upon final completion and acceptance of the Project by the Owner.
- 1.12 The Contractor shall purchase and maintain Builder's Risk Insurance sufficient to protect against loss of or damage to Owner Furnished Materials. Such insurance shall cover the full value of any Owner Furnished Materials between the time the Owner and or Contractor or its agents first takes title to and possession of any of such Owner Furnished Materials until final completion of the Work. The Contractor shall also maintain any other insurance with such deductible amounts that the Owner deems necessary as it relates to the Owner Furnished Materials.
- 1.13 The Owner shall not be liable for any interruption or delay damages in the Project by virtue of ordering the Owner Furnished Materials, for any defects or other problems with the Project by virtue of ordering the Owner Furnished Materials, or for any extra costs resulting from any delay in the delivery of, or defects in, the Owner Furnished Materials.
- 1.14 The Contractor, on a monthly basis, shall review invoices submitted by all vendors of Owner Furnished Materials delivered to the Site during the prior month and either concur or object to the Owner's issuance of payment to the vendors, based upon such Contractor's records of materials delivered to the Site and whether any of the Owner Furnished Materials for which payment has not been made were either non-conforming or defective.
- 1.15 In order to arrange for the prompt payment to the vendor, the Contractor shall provide to the Owner a list of the acceptance of the goods or materials within fifteen (15) days of receipt of said goods or materials. Accompanying the list shall be a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt of the appropriate documentation, the Owner shall prepare a check payable to the vendor based upon the receipt of data provided. This check will be released, delivered and remitted directly to the vendor. The Contractor shall assist the Owner to immediately obtain partial or final release of waivers as appropriate. The Owner shall not make any payment without the appropriate Contractor's concurrence and approval, which shall be delivered to the Owner. There shall be no retention on Owner Furnished Materials against either the vendor, the Contractor(s) or the Subcontractor (s).
- 1.16 The Contractor and or/the Owner may, in its or their reasonable discretion, require certain material and equipment vendors to provide a supply bond in the amount of one-hundred percent (100%) of the Purchase Order price. The supply bond, if required, shall be issued by a qualified surety company authorized to do business in the State of Florida and acceptable to the Owner. If the supply bond is required, the costs thereof will be added to the amount of the Purchase Order. The Contractor shall verify that a vendor can furnish a supply bond. All bonds will name the Owner and the Contractor as additional obligees.

Terms and Conditions (Attachment A).

The following Terms and Conditions are applicable to this order entered into by and between the Village of Wellington (referred to hereafter as Buyer) and Vendor (referred to as Seller).

- 2.1 Seller 's acceptance of this order will be presumed unless Seller acknowledges exception, in writing, to Buyer within ten (10) calendar days after date of order.
- 2.2 Sellers doing business with the Buyer are prohibited from discriminating against any employee, applicant , or client because of race, color, religion, disability, sex, age, national origin, ancestry , marital status, or sexual orientation with regard to but not limited to the following employment practices, rates of pay or other compensation methods , and training selection.
- 2.3 Any assignment of this order, performance of work hereunder , in whole or in part, or monies due or to become due hereunder , shall be void unless consented to by Buyer in writing and Buyer shall have no obligations to any assignee of Seller under any assignment not consented to in writing by Buyer.
- 2.4 In the event of default by the Seller, Buyer may procure the articles or services covered by this order from other sources and hold the seller responsible for any excess costs occasioned thereby.
- 2.5 Deliveries are to be made during hours 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays, unless otherwise stipulated. Seller shall notify the Buyer of deliveries that require special handling and/or assistance for off-loading. Failure to notify the Buyer concerning this type of delivery will result in the billing to Seller of any add-on re-delivery, storage, or handling charges.
- 2.6 The Buyer may grant additional time for any delay or failure to perform hereunder if the delay will not adversely impact the best interest of the Buyer and is due to causes beyond the control of the Seller. Such grant must be in writing and made part of the order.
- 2.7 In those cases where prices stated are not F.O.B. Destination, Seller is required to prepay charges and list on invoices. To the extent authorized by law, Seller shall indemnify, save and hold harmless the Buyer, its employees and agents against any and all claims, damages, liability and court awards including costs, expenses and attorney fees incurred as a result of any act or omission by the Seller, or its employees, agents, subcontractors of assignees pursuant to the terms of this order.
- 2.8 All Commodities delivered on this order are subject to inspection upon receipt by a representative of the Buyer. All rejected commodities shall remain the property of the Seller and will be returned at the Seller 's expense.
- 2.9 Seller must render original invoice to the Buyer, Attention "Project Manager, 12300 Forest Hill Blvd., Wellington, FL 33414"
- 2.10 By accepting this order, Seller understands and agrees that the items covered herein, or services to be rendered, shall be manufactured, sold or performed in compliance with applicable Federal, State, County and Local laws, ordinances, rules, codes and regulations. Lack of knowledge by the Seller shall in no way be a cause for relief from responsibility.
- 2.11 Seller shall save and hold harmless the Buyer, its employees and agents from liability for infringement of any United States patent, trademark or copyright trademark or copyright for or on account of the use of any product sold to Buyer or used in the performance of this order.
- 2.12 No modifications of this order shall be binding upon Buyer unless approved by an authorized representative of Buyer's Purchasing Office.
- 2.13 Seller compliance required under Chapter 442, Florida Statutes, that any toxic substance delivered as a part of this order must be accompanied by a Material Safety Data Sheet (MSDS).

- 2.14 Order Number must appear on all invoices, packing slips, shipping notices, freight bills, and correspondence concerning this order.
- 2.15 Payments will be made only to the company and address as set forth on order unless the Seller has requested a change thereto on official company letterhead, signed by an authorized officer of the company.
- 2.16 No endorsement by the Buyer of the product and/or service will be used by Seller in any way, manner or form in product literature or advertising.
- 2.17 Quantities specified in the order cannot be changed without Buyer's prior written approval. Goods shipped in excess of quantity designated may be returned at Seller 's expense.
- 2.18 All parties to this order agree that the representatives named herein are, in fact, bona fide and possess full and complete authority to bind said parties.
- 2.19 Responsibility will not be accepted for any goods delivered or services performed unless covered by a duly authorized Buyer Purchase Order.
- 2.20 The Buyer of Wellington is exempt from Federal and State taxes for tangible personal property. Sellers doing business with the Buyer shall not be exempt from paying sales tax to their suppliers for materials to fulfill contractual obligations with the Buyer, nor shall any Seller be authorized to use the Buyer' s Tax Exemption Number in securing such materials.
- 2.21 Buyer reserves the right to terminate this order in whole or in part for default (a) if Seller fails to perform in accordance with any of the requirements of this order or (b) if Seller becomes insolvent or suspends any of its operations or if any petition is filed of proceeding commenced by or against Seller under any State or Federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors. Any such termination will be without liability to Buyer except for completed items delivered and accepted by the Buyer. Seller will be liable for excess cost of re-procurement. By accepting this order, the Seller agrees that payment terms shall be in accord with the Florida Prompt Payment Act, Florida Statute 218.70, *et seq.*
- 2.22 No provision of Seller's agreement to supply the ordered goods, equipment, or materials shall in any way limit Seller ' s liability for damages caused by defects in the materials incorporated in, nor the design or manufacture of, Seller's equipment, goods, or materials. Seller's agreement shall not include any provision requiring the Buyer to pay Seller ' s attorney's fees in any dispute or claim arising out of this Purchase Order.
- 2.23 The Uniform Commercial Code (Florida Statutes, Chapter 672) shall prevail as the basis for contractual obligations between the Seller and Buyer for any terms and conditions not specifically stated in this order.
- 2.24 Any and all legal actions arising from or necessary to enforce this contract will be held in Palm Beach County, Florida and the service of process and interpretation of contractual obligation shall be in accordance with the laws of the State of Florida.
- 2.25 Seller acknowledges that the materials being ordered are for incorporation into the Project for Buyer pursuant to a contract with a contractor. Seller agrees that it shall warrant its goods, equipment, or materials being ordered herein in compliance with Seller's normal warranties, or in compliance with the warranty provisions of the construction contract, the terms of which are incorporated herein, whichever warranty provides the Buyer with the greatest protection. Regardless of the forgoing all warranties shall be in accordance with the contract documents to which Contractor is bound with the buyer.

END OF SECTION

EXHIBIT "I"
WARRANTY FORMS

CONTRACTOR WARRANTY FORM

PROJECT:

OWNER: VILLAGE OF WELLINGTON

CONTRACTOR:

Contractors does hereby warrant to the Owner, that all labor and materials furnished, and Work performed in conjunction with the above-referenced project are in accordance with the Contract Documents and authorized modifications thereto, and will be free from defects due to defective labor, materials or workmanship. This warranty commences on the date of Substantial Completion of the entire Project (as defined in the Contract Documents), and expires after the later of one year from the date of Substantial Completion of the entire Project, or such longer time periods for particular items according to the specifications listed in the Contract Documents. The consideration for this warranty is the amount of the Contract to Contractor for the performance of Work.

Should any defect or deficiency develop during the warranty period due to improper labor, materials, workmanship or otherwise, the same, including adjacent Work displaced, shall be made good by the undersigned at no expense to the Owner.

The Owner will give the Contractor written notice of defective Work. Should Contractor fail to correct defective Work within three (3) calendar days after receiving written notice, the Owner may, at its option, correct defects and charge the Contractor with the costs for such correction. Contractor agrees to pay such charges upon demand.

Nothing in the above shall be deemed to apply to Work which has been abused or neglected by the Owner.

By: _____
Name and Title:
Date: _____

STATE OF FLORIDA)

SS:

COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 20___ by _____ as _____(INSERT TITLE), of _____ [INSERT NAME OF ENTITY – ie: corporation, limited liability company, etc.), (insert status ie: a corporation existing under the laws of the State of _____), who is personally known to me or who has produced as identification Driver's License # _____ or (other identification) (describe) _____.

My Commission Expires:

Notary Public State of Florida at large

SUBCONTRACTOR'S MATERIAL AND WORKMANSHIP WARRANTY FORM

PROJECT:

OWNER: VILLAGE OF WELLINGTON

CONTRACTOR:

SUBCONTRACTOR:

Subcontractor does hereby warrant to the Owner, that all labor and materials furnished, and Work performed in conjunction with the above-referenced project are in accordance with the Contract Documents and authorized modifications thereto, and will be free from defects due to defective labor, materials or workmanship. This warranty commences on the date of Substantial Completion of the entire Project (as defined in the Contract Documents), and expires in accordance with the longer of one year from the date of Substantial Completion or the durations listed in the specifications in the Contract Documents for the Subcontractor's Work. The consideration for this warranty is the amount of the Contract to Subcontractor for the performance of Work.

Should any defect or deficiency develop during the warranty period due to improper labor, materials, workmanship or otherwise, the same, including adjacent Work displaced, shall be made good by the undersigned at no expense to the Owner.

The Owner will give the Contractor and/or Subcontractor written notice of defective Work. Should Subcontractor fail to correct defective Work within three (3) days after receiving written notice, the Owner may, at its option, correct defects and charge the Subcontractor with the costs for such correction. Subcontractor agrees to pay such charges upon demand.

Nothing in the above shall be deemed to apply to Work which has been abused or neglected by the Owner.

SUBCONTRACTOR

By: _____
Title: _____
Date: _____

STATE OF FLORIDA)

SS:

COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 20___ by _____ as _____(INSERT TITLE), of _____ [INSERT NAME OF ENTITY – ie: corporation, limited liability company, etc.], (insert status ie: a corporation existing under the laws of the State of _____), who is personally known to me or who has produced as identification Driver's License # _____ or (other identification) (describe) _____.

My Commission Expires:

Notary Public State of Florida at large

EXHIBIT "J"
FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT:
BID NO.:

CONTRACTOR: _____

DATE OF ISSUANCE: _____ NOTICE TO PROCEED DATE: _____

PROJECT OR DESIGNATED PORTION SHALL INCLUDE:

The work performed under this Contract has been reviewed and found to be substantially complete and all documents required to be submitted by CONTRACTOR under the Contract Documents have been received and accepted. The Date of Substantial Completion of the Project or portion thereof designated above is hereby established as _____ which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

Definition of Date of Substantial Completion

The Date of Substantial Completion of the work or portion thereof designated by VILLAGE is the date certified by VILLAGE when all conditions and requirements of permits and regulatory agencies have been satisfied and the Work is sufficiently complete in accordance with the Contract Documents including, but not limited to Article 38, so the Project is available for beneficial occupancy by VILLAGE. A Certificate of Occupancy must be issued for Substantial Completion to be achieved; however, the issuance of a Certificate of Occupancy or the date thereof are not to be determinative of the achievement or date of Substantial Completion.

A list of items to be completed or corrected, prepared by VILLAGE, is attached hereto. The failure to include any items on such list does not alter the responsibility of CONTRACTOR to complete all work in accordance with the Contract Documents. The date of commencement of warranties for items on the attached list will be the date of final payment unless otherwise agreed in writing.

CONTRACTOR

By: _____ DATE: _____
Print Name: _____

In accordance with the Agreement, CONTRACTOR will complete or correct the work on the list of items attached hereto within 15 days from Substantial Completion.

CONTRACTOR

By: _____ DATE: _____
Print Name: _____

VILLAGE accepts the Work or portion thereof designated by VILLAGE as substantially complete and will assume full possession thereof at _____ (time) on _____ (date).

VILLAGE OF WELLINGTON

By: _____ DATE: _____

Title

The responsibilities of VILLAGE and CONTRACTOR for security, maintenance, heat, utilities, damage to the Work and insurance shall be as follows:

EXHIBIT "K"
FORM OF APPLICATION FOR PAYMENT
APPLICATION FOR PAYMENT NO. _____

Project: _____ Contractor: _____
 Start Date: _____ Completion Date: _____

Application is made for payment, as hereinafter shown, in connection with this Contract:

Total Work to Date – see attached schedule	\$ _____
Total Material Suitably Stored – see attached schedule	\$ _____
Gross Amount Due	\$ _____
Less 5% Retainage	\$ _____
Amount Due to Date	\$ _____
Less Previous Applications	\$ _____
Amount Due This Application	\$ _____
<hr/>	
Original Contract Price	\$ _____
Net Change Order – Credit	\$ _____
Subtotal	\$ _____
Net Change Order – Debit	\$ _____
Current Contract Price	\$ _____
Value of Work Remaining to be Done (Current Contract Price minus Gross Amount Due)	\$ _____

Contractor's Certification – The undersigned Contractor certifies that:

- (1) all previous progress payments received from Owner on account of Work done under the Agreement referred to above have been applied to discharge in full all obligations of Contractor incurred in connection with Work covered by prior Applications for Payment numbered 1 through _____, inclusive; and
- (2) title to all materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all liens, claims, security interests and encumbrances (except such as covered by Bond acceptable to Owner).
- (3) Contractor, in consideration of payment of the Amount Due this Application, hereby waives and releases its claims, lien and right to claim a lien, if any, for labor, services, or material furnished through the Payment Period to the Village of Wellington on the Project (defined above). This waiver and release does not cover any retention on labor, services, or material furnished after the Payment Period.

Dated: _____, _____ Contractor: _____
 Mailing Address: _____

 By _____
 Name and Title _____

State of _____)
 County of _____)ss

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 20___ by _____ as _____ (INSERT TITLE), of _____ [INSERT NAME OF ENTITY – ie: corporation, limited liability company, etc.), (insert status ie: a corporation existing under the laws of the State of _____), who is personally known to me or who has produced as identification Driver's License # _____ or (other identification) (describe) _____.

Notary Public Signature and Seal

Print Notary Name and Commission No.

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

WELLINGTON DESIGNEE

Date: _____ By: _____
 (Name) (Title)

Engineer's Certification (if applicable) In accordance with the contract documents, based on on-site observations and the data comprising the application, the Engineer certifies to the Owner that to the best of the Engineer's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the amount above.

Date: _____ By: _____

EXHIBIT "L"
BILL OF SALE, ABSOLUTE

KNOWN ALL MEN BY THESE PRESENTS, that _____, a corporation of _____ County, Florida, party of the first part, for an in consideration of the sum of Ten and No/100 (\$10.00) lawful money of the United States, to it paid by WELLINGTON, a municipal corporation of the State of Florida, 12300 Forest Hill Boulevard, Wellington, Palm Beach County, Florida 33414, party of the second part, the receipt whereof is hereby acknowledged has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver unto the said party of the second party, its executors, administrators and assigns, the following goods and chattels:

Project Name: _____ consisting of the components set forth in the final schedule of values as described in Exhibit "A", attached hereto and made a part hereof.

TO HAVE AND TO HOLD the same unto the said party of the second part, its executors, administrators and assigns forever.

AND, it does, for itself and its successors and assigns covenant to and with the said party of the second part, its successors and assigns, that it is the lawful owner of the said goods and chattels; that they are free from all encumbrances; that it has good right to sell the same aforesaid, and that it will warrant and defend the sale of the said property, goods and chattels hereby made, unto the said party of the second part its successors and assigns against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, it has hereunto set its hand and seal this _____ day of _____, 20____.

Signed, sealed and delivered
in the presence of:

WITNESSES:

Signature

Print Name

Signature

Print Name

Name:

Title:

[Corporate Seal]

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 20___ by _____ as _____(INSERT TITLE), of _____ [INSERT NAME OF ENTITY – ie: corporation, limited liability company, etc.), (insert status ie: a corporation existing under the laws of the State of _____), who is personally known to me or who has produced as identification Driver's License # _____ or (other identification) (describe) _____.

(stamp)

Print Notary Name: _____

EXHIBIT "M"
CONTRACTOR'S AFFIDAVIT TO OWNER
AND FINAL RELEASE OF LIENS

STATE OF FLORIDA
COUNTY OF _____

Before me, the undersigned authority, authorized to administer oaths and take acknowledgements, personally appeared _____, who, being by me first duly sworn, on oath depose(s) and say(s):

(1) He/she is/they are a (Corporation, Partnership, or Individual) of _____ (State), doing business as _____, hereinafter called "Contractor".

(2) Contractor heretofore entered into a Contract with Wellington, hereinafter called "Owner" to do Work (furnish material, labor and services) for _____, located at Palm Beach County, Florida.

(3) Contractor has fully completed construction in accordance with the terms of the Contract, and all lienors have been paid in full, except:

<u>NAME OF LIENOR</u>	<u>AMOUNT DUE AND UNPAID</u>
_____	_____
_____	_____

(4) All Workmen's Compensation claims have been settled and no liability claims are pending, in connection with, arising out of or resulting from the Contractor.

(5) Receipt by the Contractor of the final payment, under the aforementioned Contract, shall constitute a full release and discharge by the Contractor to the Owner of any and all claims of the Contractor against the Owner, arising out of, connected with, or resulting from performance of the obligations of the Contractor pursuant to the Contract Documents.

(6) The term "lienor" as used in this affidavit means any person having a lien or a prospective lien, under the Mechanics Lien Law of Florida, on the land and property of the Owner referred to in paragraph (2) of this affidavit. Further, Contractor represents, warrants and covenants that all subcontractors, materialmen and suppliers have been paid in full. The contractor further provides under penalty of perjury that there are no claims of lien on the project.

(7) This affidavit is given pursuant to the provisions of Florida Statutes Section 713.06 or Section 255.05, whichever is applicable.

Signed and sealed in the presence of:

By: _____ (Seal)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 20___ by _____ as _____ (INSERT TITLE), of _____ [INSERT NAME OF ENTITY – ie: corporation, limited liability company, etc.), (insert status ie: a corporation existing under the laws of the State of _____), who is personally known to me or who has produced as identification Driver's License # _____ or (other identification) (describe) _____.

Notary Public Signature and Seal

Print Notary Name and Commission No.

EXHIBIT "O"
CERTIFICATE OF ENTITLEMENT – SAMPLE

I, the undersigned authorized representative of _____ (hereinafter "Governmental Entity"),
Florida Consumer's

Certificate of Exemption Number _____, certify that the tangible personal property purchased on or
after _____ (date) will be incorporated into or become a part of a public facility as part of a public
works contract pursuant to contract # _____ with _____ (Name)

I certify that the purchase of the materials contained in the attached Purchase Order meets the following
exemption requirements contained in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C.:

You must initial each of the following requirements.

- ___ 1. The attached Purchase Order is issued directly to the vendor supplying the materials the contractor will
use in the identified public works.
- ___ 2. The vendor's invoice is issued directly to Governmental Entity.
- ___ 3. Payment of the vendor's invoice is made directly by Governmental Entity to the vendor from public funds.
- ___ 4. Governmental Entity will take title to the tangible personal property from the vendor at the time of
purchase or delivery by the vendor.
- ___ 5. Governmental Entity assumes the risk of damage or loss at the time of purchase.

I understand that if the tangible personal property identified in the attached Purchase Order does not qualify for
the exemption provided in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C., Governmental Entity will be
subject to the tax, interest, and penalties due on the materials purchased. If the Department of Revenue
determines that the materials purchased tax-exempt by issuing this Certificate do not qualify for the exemption,
Governmental Entity will be liable for any tax, penalty, and interest determined to be due.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax I will be liable for
payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree
felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate of Entitlement and the facts
stated in it are true.

Signature of Authorized Representative

Title

Purchaser's Name (Print or Type)

Date Federal Employer Identification:

Telephone Number:

You must attach the Purchase Order and the Florida Consumer's Certificate of Exemption issued to Governmental Entity.

Do not send to the Department of Revenue. This Certificate of Entitlement must be retained in the vendor's and the contractor's books and records.

(d)(c) If the contractor does not have a Certificate of Entitlement, sales to the contractor are subject to tax, unless the contractor can demonstrate to the satisfaction of the Executive Director or designee that such sales are, in substance, tax-exempt direct sales to a governmental entity.

(e) The governmental entity may not transfer liability for such tax, penalty, and interest to another party by contract or agreement.

In the case of contracts with any agency or branch of the United States government in which the federal governmental agency or branch is not required to produce a Certificate of Entitlement, the purchase must comply with the five criteria provided in paragraph

SAMPLE

EXHIBIT "B"
INSURANCE
REQUIREMENTS

5.03 Certificates of Insurance

- A. The Owner and Engineer shall be named as an additional insured in all policies required to be maintained under the Contract Documents, with the exception of the Worker's Compensation insurance, unless otherwise specified herein. As a condition precedent to entitlement to any progress payment or final payment under the Agreement, CCR must maintain the required insurance coverage under the Contract Documents at least until final payment unless otherwise specified within the Contract Documents.

CCR shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which CCR is required to purchase and maintain.

- C. Failure of Owner to demand such certificates or other evidence of CCR's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of CCR's obligation to maintain such insurance.
- D. The insurance and insurance limits required herein shall not be deemed as a limitation on CCR's liability under the indemnities granted to Owner in the Contract Documents.

5.04 CCR's Insurance

- A. CCR shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from CCR's performance of the Work and CCR's other obligations under the Contract Documents, whether it is to be performed by CCR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of CCR's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CCR's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by CCR, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

- B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an a Project specific occurrence basis with limits as outlined in the Supplementary Conditions or as required by Laws or Regulations, whichever is greater. Such policies shall include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby. CCR shall deliver endorsements showing such additional insured coverage using the ISO form CG 20 10 11 85 or its 2004 ISO equivalent (forms 20 10 07 04 and 20 37 07 04) for both ongoing and completed operations;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering CCR's indemnity obligations under Paragraphs 6.11 and 6.20;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 10 days prior written notice has been given to Owner and CCR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by CCR pursuant to Paragraph 5.03 will so provide);
5. remain in effect at least until final payment and at all times thereafter when CCR may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive:
 - a. Such insurance shall remain in effect for one year after final payment.
 - b. CCR shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and each year thereafter.
7. For Worker's Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include Employer's Liability with limits as provided in the Supplementary Conditions.
8. Business Automobile Liability coverage, required by 5.04A.6, must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

Owned vehicles.
Non-owned and hired vehicles.
9. The policies of CCR shall contain an endorsement whereby the insurance carriers agree that its insurance is primary and not contributory with or in excess of any coverage which the Owner has purchased. CCR shall be responsible for all deductibles under the insurance policies. CCR shall be responsible for all loss or damage to the Work, including CCR's materials delivered to Site for incorporation therein and all property issued to the Contractor by the Owner for use or incorporation in the Work, except for Owner Direct Purchase which shall be governed by **Exhibit "F"**. CCR

shall waive all rights against the Owner for recovery of damages to the extent that these damages are covered by insurance maintained pursuant to the above requirements, and CCR shall provide all waivers of subrogation in the endorsements and forms required by the Owner.

- C. **Intentionally Deleted**
- D. CCR shall procure Professional Liability insurance covering performance of the professional services.
- E. Notwithstanding the availability of any insurance, CCR shall bear the risk of loss for its acts, errors or omissions pursuant to this Agreement. CCR bears all liability and risk of loss, for losses and damages arising from any acts, errors, omissions, or negligence on the part of CCR and its Subcontractors, including without limitation damages for defective and nonconforming work, and CCR and all applicable Subcontractors shall bear the risk and pay for such losses regardless of whether CCR should be covered for such losses by any insurance required by this Article, except for Owner Direct Purchases governed by **Exhibit "F"**.

5.05 Limits of Liability Insurance. The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

Worker's Compensation, etc., under paragraphs 5.04.A.1 and A.2 of the General Conditions:

- | | | |
|-----|--|--------------------|
| (1) | State: | Statutory |
| (2) | Applicable Federal (e.g. Longshoreman's and Harbour Workers' Compensation, Maritime, Jones Act, etc.): | Statutory |
| (3) | Employer's Liability: | <u>\$1,000,000</u> |

The coverage and the limits of liability for employer's liability are modified to read as follows:

- \$1,000,000 each accident
- \$1,000,000 disease policy limit
- \$1,000,000 disease each employee

Also, the following wording is added governing employer's liability for contractors that are not incorporated or lease employees: If CCR is not an incorporated entity (i.e. sole proprietor/partnership), or Leases Employees (under the alternate employer laws of the State of Florida), the Owner shall require a minimum premium policy meeting the aforementioned requirements even though not required by the Worker's Compensation Laws of the State of Florida. Unless and until Contractor provides the Owner with proof of exemption and such forms and proof that the Owner deems appropriate.

Comprehensive General Liability (under paragraphs 5.04.A.3 through A.6 of the General Conditions):

- (1) Including coverage for Premises/Operations Liability on an occurrence basis, Contractual Liability, Independent Contractors, Products/Completed Operations Liability on an occurrence basis, and Personal Injury Coverage with the employee exclusion deleted. The Owner will not accept exclusion for explosion, collapse, or underground in the policy.

Acceptable minimum per project limits are: \$2,000,000 general aggregate

- \$1,000,000 products and completed operations aggregate
- \$1,000,000 personal injury and advertising injury
- \$1,000,000 each occurrence

Coverage shall be on a Primary and Non- Contributory Basis.

- (2) Comprehensive Automobile Liability shall include coverage for owned vehicles, non-owned vehicles, and hired vehicles. Acceptable minimum limits are \$1,000,000 combined single limit for bodily injury and property damage.
- (3) Follow form umbrella liability naming Owner and Engineer as an additional insured, may be purchased and maintained, if necessary, to meet Owners minimum insurance requirements.

The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ or better, in accordance with the latest edition of A.M. Best's Insurance Guide.

EXHIBIT "C"
SCOPE OF WORK SPECIFICATIONS

WELLINGTON PRESTRESSED COMPOSITE TANK CLEANING AND INSPECTION

PART 1: GENERAL

1.01 SCOPE

- A. These specifications cover the requirements for the Village Utility to conduct its 5-Year Storage Tank Inspection and Cleaning by cleaning of the six (6) prestressed composite ground level water storage tanks in the Village of Wellington. The goal of the inspection is to review the status of each tank and its structural integrity, and to determine what measures, if any, are necessary to remedy deficiencies so that the longest useful life of the tank can be realized in meeting the intent of the Florida Administrative Code Chapter 62-555.350.

There are four (4) tanks at the Utility Central Operations Site (Tanks 1-4) and one (1) tank each at the two (2) remote booster station sites. Tank capacities are listed as below:

TANK	MG
1	0.25
2	1.0
3	1.0
4	2.0
Booster Tank 1	2.0
Booster Tank 2	2.0

Any repair work will be conducted under a separate proposal from the initial proposal to inspect and clean the tanks.

1.02 QUALIFICATIONS & EXPERIENCE OF THE CONSTRUCTOR

- A. The Contractor shall be a firm with at least 10 years' experience in the construction of wire-wound circular prestressed composite tanks; and shall give satisfactory evidence that it has the skill, reliability, and financial stability to maintain the tank in accordance with the quality required by these specifications. The Contractor shall have performed the same services on at least 10 dome-covered prestressed composite tanks of equal size or larger, which meet these specifications and which are now giving satisfactory service.
- B. The Contractor shall have on its staff a full-time Professional Engineer, who shall have no less than five (5) years' experience in the design and field construction of circular prestressed composite tanks, and who shall be in charge of the work to be done. All required reports shall carry the seal of such registered Florida Professional Engineer.

1.03 SUBMITTALS

- A. Submit to the Owner a complete set of signed and sealed completion reports. A separate signed and sealed report will be required for each tank. Reports shall be submitted within 30 days of the inspection.

1.04 GUARANTEE

- A. The Contractor shall guarantee workmanship and materials on any maintenance performed (additional service) on the tanks for a one-year period from date of acceptance of the work. In case leakage or other defects appear within the one-year period, the Contractor shall promptly repair the tank at its own expense upon written notice by the Owner that such defects have been found. Leakage is defined as damp spots, oozing or flowing liquids appearing on the exterior of the tank, the source of which is from the inside of the tank.

1.05 TANK CLEANING, INSPECTION, AND REPORTING

A. Inspection Services:

1. Inspection services shall be provided in one (1) tank at a time. Each tank can be out of service no longer than five (5) calendar days.
2. The Contractor shall perform the removal and reinstallation of manhole covers as required.
3. The Contractor shall provide confined space certified personnel for entry into each tank.
4. The Contractor shall provide tank cleaning to meet the requirements of Florida Administrative Code 62- 555.350: Rinsing sediment from the tank floors and walls at a minimum pressure of 150psi sufficiently so that they are clean enough to inspect. The mixture of wash water, sediment and debris shall be removed from the tank and disposed of offsite. While performing work on potable water tanks, Contractor must specifically use equipment only for potable water use.
5. The Contractor shall perform an on-site visual inspection and evaluation of the exterior and interior of the ground storage tanks including:
 - a. Wall Foundation or Footing and Wall Exterior:
 - i. Wall foundation or footing, if exposed, (dips, damp spots, bearing and/or joint filler pads, if present, and gap between wall and subgrade or wall and footing)
 - ii. Cracks and hollows
 - iii. Architectural finish coating (paint)
 - iv. Manhole condition (cover, frame, bolts, and gasket)
 - v. Pipe sleeves, if present, (frame and seal by modular, mechanical type, synthetic rubber "link" units)
 - vi. Ladder, if present (risers, rungs, wall brackets, all connections including welds, shotcrete boss, fasteners, and safety rail)
 - vii. Liquid level indicator, if present (fiberglass board, target, wall brackets, connections, shotcrete boss, precast concrete curb on dome, fasteners, cables, float, pulleys, and mechanism)
 - b. Dome Exterior:
 - i. Check for cracks and hollows
 - ii. Check for spalling
 - iii. Check architectural finish coating (paint)
 - iv. Hatch (precast concrete curb, fiberglass cover, insect barriers, hasp, fasteners, and mechanism)
 - v. Ventilator (precast concrete curb, fiberglass housing, screens around circumference and on bottom, fasteners, and caulking)
 - vi. Aerator, if present (screens, fiberglass, bolts)
 - vii. Overflows, if present (precast concrete, screens, fasteners, and caulking)
 - viii. Handrail, if present (rails, posts, toe-boards, flanges, brackets, all connections including welds, and fasteners)
 - c. Wall Interior:
 - i. Shrinkage cracks and hollows
 - ii. Spalling

- iii. Ladder, if present (risers, rungs, wall and base brackets, braces, connections, shotcrete bosses, fasteners, and safety rail)
 - d. Floor Interior:
 - i. Cracks (note size and length)
 - ii. Pipes (encasements, coatings, support brackets, and bolts)
 - iii. Waterstop, if applicable (irregularities, holes, encasement)
 - iv. Gap between wall and waterstop, if applicable
 - e. Dome Interior:
 - i. Check for exposed reinforcing steelbars
 - ii. Check for exposed welded wire fabric
 - iii. Check for damage from chemical attack
6. The Contractor shall provide comprehensive written reports for each tank (three signed and sealed hard copies and one electronic copy) signed and sealed by a Professional Engineer as required by FAC 62-555.350 including a photographic record of the inspections with recommendations resulting from the technical review of the inspection findings.

B. Disinfection

1. The Contractor shall disinfect each tank in accordance with the requirements of the AWWA C652 and regulations of the state of Florida before returning the tank to operations. The Contractor shall provide all necessary equipment, materials, and labor in order to complete the disinfection process.
2. Contractor shall submit the Disinfection Plan to Owner for approval prior to conducting any work.

C. Bacterial Testing

1. The Contractor shall perform bacteriological testing on the full facility in accordance with regulations of the State of Florida.
2. The Contractor shall be responsible to repeat the disinfection process if bacteria samples are unsatisfactory and Contractor shall repeat disinfection process until bacteria samples are completed satisfactorily.
3. The Contractor shall submit passing test reports to the Owner prior to placing the tanks back into service and proceeding to the next tank.

D. Reporting Requirements

1. The Contractor shall prepare a report, which presents in tabular and narrative form the information, data, assessments, and professional recommendations for the items in the following paragraphs. Each tank shall be addressed separately.
2. General information required for each tank:
 - a. Location and address of tank
 - b. Name of tank erectors
 - c. Date of erection
 - d. Type of tank
 - e. Tank capacity

- f. Tank diameter
 - g. Overflow elevation
 - h. Bottom elevation
 - i. Number of columns, if applicable
 - j. Date of last inspection (to be provided by Owner)
 - k. Method of last inspection (in the dry or in the wet) (to be provided by Owner)
 - l. Name and address of the firm performing the most recent previous inspection (to be provided by Owner)
 - m. Date of last interior cleaning and type of cleaning (drained washout or full tank vacuum) (to be provided by Owner)
 - n. Date of inspection
 - o. Name(s) of inspectors
3. The report shall include the following coating information for each tank:
- a. Date of last recoating - interior and exterior
 - b. Coating materials used in last recoating - interior and exterior.
 - c. Coating method used on previous coating (overcoat versus blast and recoat)
4. The report shall include a description of the following conditions associated with each tank:
- a. Tank Foundation: including cracks, evidence of settlement, anchor bolts, chas
 - b. Tank Exterior: including cracks, corrosions, efflorescence, all tank penetrations, and coating condition
 - c. Tank Interior: including cracks, corrosion, coating condition, all tank penetrations, and sediment accumulation
 - d. Ladders: including ladder type, corrosion, structural integrity of sides, rungs and connection and fall protection system
 - e. Accessories: including all vents, hatches, overflow, water level indicator, cathodic protection, and obstruction lighting
5. The report shall provide a summary of the following:
- a. Structural integrity: structural condition of each tank
 - b. Coating integrity: coating condition, estimated service life remaining.
 - c. Water Quality Security: site security, tank access security and water security assessment and recommended repairs
 - d. Operation Safety: personnel access safety
 - e. Recommended Maintenance Program
6. Tank cleaning, Inspection and Reporting
- a. Recommendations of repairs including urgency and estimated cost
7. The report shall include photographic and audio-visual documentation of the following:
- a. Photographs of all items noted on report
 - b. Tank Exterior
 - i. Provide a clear, narrated audio-video recording of the tank site and surroundings
 - ii. Provide photographs of problem areas

c. Tank Interior

- i. Provide photographs of problem areas**

END OF SECTION

EXHIBIT “D”
FEE SCHEDULE

CROM SHIELD™ ASSET PROTECTION PROGRAM RATES

WATER AND WASTEWATER INSPECTIONS, PREVENTATIVE MAINTENANCE, CORRECTIVE MAINTENANCE AND UPGRADES

Inspection Level	Mobilization for Inspection	Comprehensive Report
Level 1 Exterior ²	\$3,000.00	\$500.00
Level 2 Dry ^{1,2}	\$3,500.00	\$1,500.00

Note 1: Level 2 Dry Inspection; exterior and interior (does not include washout or disinfection of the tank).

Preventative Maintenance with Cleaning and Disinfection

Size of Tank in Volume	Mobilization	Cleaning	Disinfection
Up to 250,000	\$2,950.00	\$5,265.00	\$1,515.00
Up to 1,000,000	\$2,950.00	\$9,265.00	\$2,590.00
Up to 2,000,000	\$2,950.00	\$15,985.00	\$3,520.00

Corrective Maintenance and Upgrades

Corrective Maintenance and Upgrades	Unit of Measure	Unit Rate
Mobilization	Each crew	\$2,950.00
Emergency mobilization (Within 48 hours)	Each crew	\$4,425.00
Standard Labor Rate	Hourly	\$162.50
Overtime Rate (After-Hours)	Hourly	\$243.75
Project Manager	Hourly	\$208.00
Professional Engineer	Hourly	\$357.50
Hydro Demolition Mobilization	Each crew	\$7,550.00
Hydro Demolition Crew Rate	Hourly	\$643.75
Hydro Demolition Overtime Rate	Hourly	\$965.63
Materials	% Cost Plus	15%
Equipment	% Cost Plus	10%
Subcontractor	% Cost Plus	10%

Periodic and final payment, including any retention, shall be made in accordance with applicable state Prompt Payment law, and is to be received by us in our accounting office at 250 SW 36th Terrace, Gainesville, Florida 32607.

A surcharge of 4% will be added to all credit card payments.

If a Public Construction Bond is required, add \$9.00 per \$1,000 of project amount.