

TOWN OF LONGBOAT KEY, FL



INVITATION FOR BIDS

#24-069

STATE ROAD 789 (GULF OF MEXICO DRIVE) TURN LANES

**BID & CONTRACT DOCUMENTS
TECHNICAL SPECIFICATIONS & REQUIREMENTS**

Issue Date: WEDNESDAY, MAY 15, 2024

**Procurement Division
501 Bay Isles Road
Longboat Key, Florida 34228
Email: kkennedy@longboatkey.org**

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TOWN OF LONGBOAT KEY, FLORIDA

INVITATION FOR BID - OVERVIEW

The Town of Longboat Key, Florida, is accepting sealed bids for:

IFB 24-069 STATE ROAD 789 (GULF OF MEXICO DR.) TURN LANES

BID SUBMITTAL DUE DATE AND BID OPENING:

Bids shall be delivered no later than **2:00 p.m. local time on FRIDAY, JUNE 21, 2024** to the Procurement Division, Town Hall, 501 Bay Isles Road, Longboat Key, Florida 34228. At that time, the Town will open all timely submitted bids for the sole purpose of recording the names and the total base bid of the contractors submitting bids.

Documents for this Invitation to Bid (“IFB”) are available through Demand Star: <http://www.demandstar.com> and the Town’s Procurement Division, via email ccoghill@longboatkey.org

GENERAL PROJECT DESCRIPTION

The Town of Longboat Key (Town) is currently seeking sealed bids from licensed General Contractors to provide roadway improvements including but not limited to widening the existing pavement width, creating a pavement section, drainage improvements, signing and marking and landscape. The awarded contractor shall provide all materials, equipment and labor.

MANDATORY PRE-BID

A mandatory pre-bid meeting will be held on Thursday, June 6, 2024 commencing at 10:30am at Town Hall Commission Chamber, 501 Bay Isles Rd., Longboat Key, FL 34228.

COMMUNICATIONS AND INQUIRIES

Questions or information requests for clarification regarding this IFB must be submitted via email to Kari Kennedy, kkennedy@longboatkey.org by **4:00 p.m. local time, Friday, June 14, 2024.**

SCHEDULE OF EVENTS

The Town anticipates the following projected schedule for the IFB process. The Town reserves the right at its sole discretion to revise the projected schedule by issuing an addendum to the IFB at any time.

Release of IFB	Wednesday, May 15, 2024
Mandatory Pre-Bid	Thursday, June 6, 2024 at 10:30 a.m.
Inquiry Deadline Date	Friday, June 14, 2024 by 4:00 p.m.
Response Due Date	Friday, June 21, 2024 by 2:00 p.m.

GENERAL INSTRUCTIONS TO CONTRACTORS
IFB #24-069 STATE ROAD 789 (GULF OF MEXICO DR.) TURN LANES

1. SUBMISSION OF BID

1.1 IFB documents are available through <http://www.demandstar.com>. The Contractor's sealed bid must be received by the Town's Procurement Division on or before **FRIDAY, JUNE 21, 2024 at 2:00 PM local time** according to the time clock at the Town. A Contractor may not submit a proposal via telephone, facsimile, electronic mail, or any other means except as provided for herein.

If the Contractor elects to mail in its sealed bid, the Contractor must allow sufficient time to ensure the Town's Procurement Division receipt of the proposal by the bid due date. Regardless of the form of delivery, it is the Contractor's responsibility to ensure that the bid arrives at the Town's Procurement Division office no later than 2:00 p.m. local time on the bid due date.

Bids must be delivered in sealed envelopes with the following information clearly provided on the front of the envelope: The Contractor's name and address; "IFB 24-069 STATE ROAD 789 (GULF OF MEXICO DR.) TURN LANES" The bids must be submitted with one (1) original marked "ORIGINAL", four (4) hard copies marked "COPY," and one (1) electronic copy of the bid in .pdf format on flash drive.

Submitted bids shall remain in effect for one hundred twenty (120) days after the bid opening.

1.2 All bids shall be opened in public by the Procurement Manager (or designee) at the specified time and place.

1.3 A Contractor may withdraw a bid any time prior to the public opening upon delivery of a written request to the Procurement Division.

1.4 A bid must contain a manual signature of Contractor's authorized representative in the space provided. All corrections made by Contractor to its bid must be initialed by same. If the bid is made by a partnership, corporation, joint venture, or team, the name and address of the partnership or corporation or all members of the joint venture or team shall be shown together with the names and addresses of the partners or officers of all entities. If the bid is made by a partnership, it must be acknowledged by one of the partners; if made by a corporation, by one of the officers; if made by a joint venture or team, by one officer of each participating entity.

1.5 It is the responsibility of the Contractor to ensure all bids are identical (originals, copies, and digital). Contractors submitting bids found to be inconsistent are subject to disqualification.

1.6 The Town assumes no responsibility for bids received after the advertised bid opening or at any office or location other than that specified herein, whether due to mail delays or other reasons.

1.7 When any period of time is referred to in this IFB or 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 acknowledged as a Town holiday, such day will be omitted from the computation. A calendar day of 24 hours measured from midnight to the next midnight will constitute a day.

1.8 All submitted material from a Contractor will be subject to Florida's Public Records Law. Contractor acknowledges that all information contained within its bid is subject to disclosure under the State of Florida's Public Records Law. No information should be labeled confidential unless exempted under said law. Pursuant to Section 119.071(1)(b)2., Florida Statutes (F.S.), bids may be exempt from public record for thirty (30) days after opening the bids or until such time as the Town provides notice of an intended decision, whichever comes first. A list of Contractors will be uploaded to <http://www.demandstar.com> and posted on the Town's public bulletin board. A copy will be furnished upon written request with an enclosed, stamped, self-addressed envelope. Non-exempt bid files may be examined during normal working hours by appointment. A list of Contractors will not be provided by telephone.

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

1.10 Any person requiring a special accommodation at Town Hall because of a disability should call the Procurement Manager, Kari L. Kennedy, at least five (5) working days prior to the bid opening at 941-316-1999 (voice) or 800-955-8771 (TDD for persons with hearing or speech disabilities).

2. BID EVALUATION

2.1 Bids shall be evaluated based on all submitted information and pursuant to the criteria stated herein. The Town may conduct such investigations as deemed necessary to assist in the evaluation of any bid and to establish the responsibility, qualifications, and financial ability of the Contractors, proposed subcontractors (if any), and other persons and organizations to do the work in accordance with the IFB Documents to the Town's satisfaction within the prescribed time. The Town reserves the right to reject bids based upon insufficient qualifications, as determined by the Town.

2.2 The Town reserves the right to reject any or all bids, in whole or in part, for any reason whatsoever, and to re-let the IFB at the Town's discretion. The Town reserves the right to waive and/or accept minor irregularities when, in the sole opinion of the Town, such waiver or acceptance is deemed to be in the best interest of the Town.

2.3 Only additional terms or conditions necessary for clarification of bid requirements will be evaluated or considered. After the bid opening, the Town may request such additional information as required to award the IFB. No deviations from specifications will be accepted; no alternate bids will be accepted unless requested in the specification or IFB form. Such bids will be deemed non-responsive.

2.4 A responsible and responsive bid will be considered as one which meets or exceeds the IFB specifications, and which is submitted by a Contractor capable of performing the requirements as stated in the IFB documents. General criteria used by the Town for evaluating "responsible and responsive" Contractors include, but are not limited to:

- 2.4.1 The ability, capacity, and skill of the Contractor to perform the contract or provide the service required;
- 2.4.2 Whether the Contractor can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- 2.4.3 The character, integrity, reputation, judgment, experience, and efficiency of the Contractor;
- 2.4.4 The Contractor's quality of performance of previous contracts or services;
- 2.4.5 The previous and existing compliance by the Contractor with laws and ordinances relating to the contract or services;
- 2.4.6 The sufficiency of the financial resources and ability of the Contractor to perform the contract or provide the service;
- 2.4.7 The quality, availability, and adaptability of the goods or services proposed by Contractor to the particular use required; and
- 2.4.8 The number and scope of conditions attached to the submittal by Contractor.

The Contractor's ability to meet these requirements shall be solely by the determination of the Town. An "unresponsive Contractor" is one who fails to attend a mandatory pre-bid meeting or other mandatory meetings as required by the IFB Documents; fails to specifically include information required by the specifications; submits a bid that is not signed by the Contractor; submits a bid that does not include information specifically required in the IFB Documents; or is otherwise unqualified. Lack of responsiveness shall solely be the determination of the Town.

2.5 Contractor is responsible for accuracy of its bid.

2.6 Following the submittal of the responses to this IFB, the Town will review the responsive bids. The recommendation of award will be forwarded to the Town Manager for review and final decision.

3. DISQUALIFICATION OF CONTRACTORS

Any cause including, but not limited to, the following may be considered as sufficient for the disqualification of a Contractor and the rejection of its submittal:

3.1 Submission of more than one bid for the same work by an individual, firm, partnership, or corporation under the same or different names.

3.2 Evidence of collusion among Contractors, or previous participation in collusive bidding or proposing on work for the Town.

3.3 Any material misrepresentation.

3.4 Uncompleted work for which the Contractor is committed by contract which, in the judgment of the Town, might hinder or prevent the prompt completion of the work under this IFB if awarded to Contractor.

3.5 Inconsistencies between the submittals provided from the Contractor.

- 3.6 Violations of the cone of silence as provided for herein;
- 3.7 Familial relation with the Town Procurement agent (Town Manager or Procurement Manager) or public officer (Town Commissioner) as provided for in Section 112.313(3), F.S.;
- 3.8 Conviction for a public entity crime as provided for in Section 287.133, F.S.; or
- 3.9 Prior suspension or debarment as set forth in Section 38.31 of the Town Code.

The above listed causes are not an exclusive list, and the Town may disqualify Contractors for other good causes.

4. INTERPRETATIONS OF DATA

No interpretation of data including, but not limited to, surveys, plans, drawings, test results, and similar materials will be made to any Contractor, except for what is provided in the IFB Documents or by written addendum.

5. CONTRACTOR COMMUNICATION AND/OR INQUIRIES

The Contractor shall review this competitive solicitation in its entirety to determine whether the Scope of Work, conditions and requirements are clearly stated. If the Contractor has any questions regarding this competitive solicitation, the Contractor must submit such inquiries and requests for clarification via email only to the Town's Procurement Manager at kkennedy@Longboatkey.org. These inquiries or requests for clarification must provide the questions along with the relevant Section(s), Subsection(s), Paragraph(s), and page number(s) of the competitive solicitation being questioned by the Contractor.

The Town will consider only those communications and/or inquiries submitted via email and received by the Town's Procurement Manager on or before Friday, June 14, 2024 at 4:00 PM local time (the "Inquiry Deadline Date").

The Town will consider the Contractor's lack of inquiries or requests for clarification prior to the Inquiry Deadline Date to constitute the Contractor's acceptance of all of the conditions and requirements as stated in this IFB and any amendments thereto. Unless the Town's Procurement Division specifically requests the Contractor to provide additional communications, the Town may not accept or consider any of the Contractor's written or other communications and/or inquiries received between the Inquiry Deadline Date and the posting of an award, if any, under this competitive solicitation.

To the extent the Town determines, in its sole discretion, to respond to any communications, inquiries or requests for clarification prior to the Inquiry Deadline Date, the Town's response will be made in a written addendum to this IFB and posted on Demand Star.

- 5.1 Addenda: The Town's Procurement Manager or designee will distribute any addenda via Demand Star. The Contractor's authorized representative must acknowledge receipt of each addendum issued. All Contractors, vendors, and known interested vendors, are responsible for checking Demand Star for addenda in order to verify whether any changes have been made to the IFB. Contractors are cautioned that any oral or written representation made by any person that appears to change materially any portion of the competitive solicitation documents shall not be relied upon unless subsequently ratified by a written addendum to this IFB issued by the Procurement Division.

6. EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

The Town is an equal opportunity/affirmative action employer. The Town is committed to equal opportunity employment efforts and expects firms that do business with the Town to have a vigorous affirmative action program.

7. WOMEN/MINORITY BUSINESS ENTERPRISE OUTREACH

The Town hereby notifies all potential Contractors that Women/Minority-Business Enterprises are to be afforded a full opportunity to participate in any procurement by the Town and will not be subject to discrimination on the basis of race, color, sex or national origin.

8. CONTRACTOR AFFIRMATION

By submitting a bid, the Contractor affirms that the bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation, and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; the Contractor has not directly or indirectly induced or solicited any other person to submit a false or sham bid; the Contractor has not solicited or induced any person, firm, or corporation to refrain from submitting a bid; and the Contractor has not sought by collusion to obtain any advantage over other persons or over the Town.

9. CONTRACTOR DEVELOPMENT COSTS

Neither the Town nor its representative(s) shall be liable for any expenses incurred in connection with preparation of a response to the IFB. Contractors should prepare their responses simply and economically, providing a straightforward and concise description of the Contractor's ability to meet the requirements of the IFB.

10. CODE OF ETHICS

If any Contractor violates or is a party to a violation of the Code of Ethics of The Town of Longboat Key or the State of Florida, with respect to this IFB, such firm may be disqualified from performing the work described in this IFB or from furnishing services for which the bid is submitted, and shall be further disqualified from bidding on any future requests for work, goods, or services for the Town.

11. CONFLICT OF INTEREST

Subject to the provisions of Chapter 112, F.S., all Contractors must disclose with their bid the name of any officer, director, agent, or shareholder who is also an employee of the Town. All Contractors must disclose the name of any Town employee who owns, directly or indirectly, an interest of five percent (5%) or more in the Contractor's firm or any of its branches.

12. DISCLOSURE - ADVISORY BOARD MEMBER OF TOWN

12.1 Sections 112.313(3) and 112.313(7), F.S., prohibit an advisory board member of the Town from holding any employment or contractual relationship with any business entity doing business with the Town. Section 112.313(12), F.S., provides that an advisory board member will not be in violation of the prohibition if certain conditions are met, including the filing of a disclosure form with the Supervisor of Elections, which is the sole responsibility of the Contractor and must be filed prior to or at the time of submission of the bid. A copy of the filed disclosure form shall be included as part of the Contractor's response.

- 12.2 Advisory board member is required to, prior to or at the time of the submissions of the bid, file a statement with the Supervisor of Elections, disclosing his or her interest and the nature of the intended business.
- 12.3 Advisory board member, or his or her spouse or child is required to have in no way used or attempted to use his or her influence to persuade a member of the Town or any of its personnel to enter into such a contract other than by the mere submission of the bid.
- 12.4 Advisory board member, or his or her spouse or child is required to have in no way participated in the determination of the bid specifications or the determination of the responsible and responsive Contractor.

13. CONE OF SILENCE

After the issuance of the IFB by the Town, Contractors and their representatives shall not contact, communicate with, or discuss any matter relating in any way to this IFB with the Town, including any Commissioner, or any employee of the Town other than the Town's Procurement Manager (or designee) unless otherwise directed on the Invitation for Bid Overview of this IFB. This prohibition begins with the issuance of the IFB and ends upon award of the resulting contract. Such communications initiated by a Contractor shall be grounds for disqualifying the offending Contractor from consideration for award under this IFB and/or potentially any future procurement for goods or services with the Town.

14. COPYRIGHT

The Contractor shall irrevocably transfer, assign, set over, and convey to the Town all rights, title, and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to the contract awarded under this IFB. The Contractor further agrees to execute such documents as the Town may request to affect such transfer or assignment. Further, the Contractor agrees that the rights granted to the Town by this paragraph are irrevocable. The Contractor's remedy in the event of termination of or dispute over any agreement entered into as a result of this solicitation shall not include any right to rescind, terminate, or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of any agreement entered into as a result of this solicitation shall have the effect of rescinding, terminating, or otherwise invalidating the rights acquired pursuant to the provisions of this paragraph.

15. INSURANCE

- 15.1 Within ten (10) days of the posted date of Notice of Award, the apparent qualified awarded Contractor shall submit to the Town's Procurement Manager (or designee) a copy of its current insurance coverage with endorsements, as evidenced by certificates of insurance with an insurance carrier approved and licensed by the Insurance Department of the State of Florida.
- 15.2 The Town of Longboat Key shall be named as additional insureds, along with any additional entities specified in the Contract. The insurer shall agree to waive all rights of subrogation against the Town and any additional entities specified in the Contract
- 15.3 Bid award will be subject to proof of insurance, in the form of certificates of insurance, being provided to the Town within ten (10) days of the posted date of the Notice of Award,

and subject to acceptance of the types and amounts of coverage by Town's Procurement Manager.

- 15.4 The certificates of insurance shall provide thirty (30) days written notice for any change, cancellation, or non-renewal.
- 15.5 Insurance coverage required from the apparent qualified awarded Contractor shall be provided by or on behalf of all subcontractors to cover their operations performed. The awarded Contractor shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.
- 15.6 Proof of insurance with endorsements shall be sent to:

Town of Longboat Key
Attention: Kari L. Kennedy, Procurement Manager
501 Bay Isles Road
Longboat Key, Florida 34228

NOTE: Please affix IFB number and project title on certificate.

The acceptable form of the certificate of insurance shall be the industry standard ACORD certificate.

- 15.7 Once received by the Procurement Manager, the Certificate of Insurance and endorsements shall accompany the executed contract.

16. NEGOTIATION

- 16.1 The Town Manager shall negotiate a contract with the lowest responsible and responsive Contractor for the subject services at compensation which the Town determines is fair, competitive, and reasonable. This IFB process is conducted pursuant to Chapter 38 of the Town's Code of Ordinances and the Finance Department's administrative procedures.
- 16.2 Preference may be given to Contractors with drug-free workplace programs whenever identical submittals (quality, price, and service) are submitted; Contractor shall certify that its program complies with the requirements of Section 287.087, F.S. Information about the program shall be included in the bid submittal.
- 16.3 At the sole discretion of the Town, payment terms and other consequential information may also be utilized in resolving apparent tie bids.
- 16.4 The Town reserves the right to accept or reject any or all bids, to waive any informalities or minor irregularities in the IFB process, and to postpone the award of the contract for a period of time not to exceed ninety (90) days from the IFB opening date.
- 16.5 Negotiation and award shall further be based on the criteria stated in the Specific Instructions to Contractors and Town Procurement procedures as set forth in Chapter 38 of the Town's Code of Ordinances.
- 16.6 Any protest related to this IFB must be in accordance with the Town's Protest Procedures as specified in Chapter 38 of the Town's Code of Ordinances.

17. PRICES

Firm prices shall be bid. Unit prices will prevail on the submitted Bid Forms. If applicable, unit prices will be utilized to adjust the total compensation due to the awarded Contractor based on actual quantities provided as part of the work and verified by the Town.

18. ESTIMATED QUANTITIES

When applicable, and unless specifically addressed, the estimated quantities of work to be done and materials to be furnished under this IFB are to be considered as approximate only and are to be used solely for the comparison of proposals. The Town does not expressly nor by implication represent that the actual quantities involved will correspond exactly therewith, nor shall the proposer plead misunderstanding or deception because of such estimate of quantities. Payment to the awarded Contractor will be made only for the actual quantities of work performed and material furnished in accordance with the contract, and it is understood that the quantities may be changed as provided in the IFB Documents without in any way invalidating any of the unit or lump sum prices.

19. MISTAKES

Contractors are required to examine the IFB and all other Contract Documents. Failure to do so will be at Contractor's risk. In case of a mistake in extension, the unit price will govern. All corrections made by Contractor to any bid entry must be initialed and must be submitted before the bid opening.

20. TAXES

Goods and services sold to the Town under this IFB and the ensuing contract shall be less all federal, state, and local taxes, in accordance with the tax-exempt status of the Town (Town State Sales and Use Tax Exemption Certificate Number: 85-8012646331C-7).

21. WARRANTY OF TITLE

Contractor warrants and guarantees that title to all work, materials, and equipment covered by any invoice or application for payment will pass to the Town, no later than the time of payment, free and clear of all liens.

22. ADA COMPLIANCE

Proposals, bids, and other documents submitted by the proposer to the Town, which are required to be posted on the Town's website, must be accessible under the "WCAG AA" (Web Content Accessibility Guidelines, Level AA) to adhere to the Americans with Disabilities Act (ADA) compliancy guidelines. In the event the proposer is unable to provide the applicable documents to the Town in an ADA-compliant format, all applicable documents must be submitted in the original format (Word, PowerPoint, etc.) and the Town can convert the document(s) at a cost of \$2.95 per page or the current contracted rate. The proposer shall be solely responsible for all associated fees. For questions or requests to the Town to convert applicable documents, contact the Town at 501 Bay Isles Road, Longboat Key, Florida 34228, 941.316.1999, or email the Town at ADACompliance@longboatkey.org. For information on providing documents in an ADA-compliant format, please refer to the U.S. Department of Health and Human Services Website regarding digital communications <https://www.hhs.gov/accessibility.html>."

23. PUBLIC RECORDS

Pursuant to applicable Florida law, the Contractor's records associated with the Contract hereunder may be subject to Florida's public records laws, Section 119.01, F.S., et seq, as amended from time to time. The Contractor agrees to comply with Florida's public records law by keeping and maintaining public records required by the Town in order to perform the Services. Upon request from the Town's Custodian of Public Records, the Contractor shall provide the Town with copies of or allow access to the requested public records at a cost that does not exceed the cost provided for under Chapter 119, Florida Statutes, or as otherwise provided for by Florida law. The Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of the Contract and following completion of the Contract if the Contractor does not transfer the records to the Town. Upon completion of the Contract the Contractor shall transfer, at no cost, to the Town all public records in possession of the Contractor or keep and maintain all public records required by the Town to perform the Services. If the Contractor transfers all public records to the Town upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS TRISH SHINKLE, TOWN CLERK, AT 501 BAY ISLES ROAD, LONGBOAT KEY, FLORIDA 34228, (941) 316-1999, TSHINKLE@LONGBOATKEY.ORG.

24. E-VERIFY

The Contractor and its subcontractors (if any) warrant compliance with all federal immigration laws and regulations that relate to their employees including, but not limited to, registering with, and using the E-Verify system. Contractor agrees and acknowledges that the Town is a public employer that is subject to the E-Verify requirements as set forth in Section 448.095, Florida Statutes, and that the provisions of Section 448.095, F.S., apply to this Contract. Notwithstanding, if the Town has a good faith belief that Contractor has knowingly hired, recruited, or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under this Contract, the Town shall terminate the Contract. If the Town has a good faith belief that a subcontractor performing work under this Contract knowingly hired, recruited, or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under this Contract, the Town shall promptly notify Contractor and order Contractor to immediately terminate the contract with the subcontractor. Contractor shall be liable for any additional costs incurred by the Town as a result of the termination of the Contract based on Contractor's failure to comply with the E-Verify requirements referenced herein.

25. STATE AUDIT

The Contractor shall retain sufficient records demonstrating its compliance with the terms of the Contract for a period of five (5) years from the date of final payment and shall allow the Town, Florida Department of Transportation or its designee, or the Auditor General access to such records upon request. The Contractor shall ensure the audit working papers are made available upon request for a period of five (5) years from the date of final payment unless extended in writing by the Town or Florida Department of Transportation.

26. INSPECTOR GENERAL COOPERATION

The Contractor agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

SCOPE OF WORK / SPECIFIC INSTRUCTIONS
IFB #24-069 STATE ROAD 789 (GULF OF MEXICO DR.) TURN LANES

1. BACKGROUND

The Town of Longboat Key is a ten-mile-long barrier island within both Manatee and Sarasota Counties. The northern half of the Town is in Manatee County, while the southern half is located in Sarasota County. The Town is off the coast of Sarasota in Southwest Florida and has a reputation as an affluent residential community, particularly for retirees who relocate predominantly from northern states. The Town has a permanent population of approximately 6,845 residents but is also a popular seasonal destination for visitors and part-time residents. During the winter months, the population of the Town typically increases to between 18,000 and 24,000. The Town is bordered on the east by Sarasota Bay and on the west by the Gulf of Mexico.

State Road ("SR") 789 is a two-lane undivided roadway with 4-foot-wide paved shoulders and symbol markings for bike lanes in the Town, in Sarasota County. SR 789 is approximately 2.0 miles from St. Armand's Circle to 900 feet south of Channel Lane with a posted speed limit of 35 mph. SR 789 is approximately 4.6 miles from 900 feet south of Channel Lane to Manatee County line with a design and posted speed limit of 45 mph. The functional classification of SR 789 is a major collector within the Urban Boundary of Sarasota County.

Project improvements on SR 789 (Gulf of Mexico Drive) begin at the intersection of Channel Lane and extend north to the intersection of Longboat Club Road, measuring 0.84 miles in length.

This project received two (2) design variances from FDOT. The first reduces the clear zone width from 18.0' to 17.3' at one (1) location (station 267+50, Lt) to preserve a 64" diameter Banyan tree. The second reduces the proposed left turn lane width from 11 feet to 10 feet. To allow for this lane width reduction, FDOT recommended that the posted speed be reduced from 45 mph to 40 mph. This posted speed reduction was supported by a traffic study.

This project has been prioritized by the Town and by the Sarasota-Manatee Metropolitan Planning Organization (MPO). As a result, this project was added to the 5-year Work Program in the year 2025. The project is State funded for construction in the FDOT Work Program for FY 2024/2025 (July 1, 2024, through June 30, 2025). A Barrier Island traffic study also identified the need for the project.

2. SCOPE OF WORK

The Town is currently seeking sealed bids from licensed and qualified contractors to provide all permits, labor, equipment, materials, supplies, transportation, and supervision necessary to provide roadway improvements including but not limited to widening the existing pavement width, creating a pavement section, drainage improvements, signing and marking and landscape.

The proposed roadway improvements include widening the existing pavement width by 16 feet on the southbound side, creating a 44 feet wide pavement section. The widened pavement section will allow for a new typical roadway section that consists of two (2) 11-foot travel lanes, one (1) 10-foot left turn lane, and two (2) six-foot wide paved shoulders.

Drainage improvements include a proposed swale with a 3-foot-wide bottom on the south side of the roadway. The existing 30" cross culvert at station 264+ 43 will be extended.

To improve existing roadway drainage, the existing roadway profile will be increased to 0.60% from station 275+50 to 277+10. This will require overbuilding the existing pavement structure.

Signing and marking are proposed. Markings include centerline, turn lane, double 6-inch white edge lines and symbol markings for bike lanes. Speed limit signs are proposed.

Five landscaped median islands are also proposed for center turn lane. A Landscape Maintenance Agreement is provided with the FDOT permit.

The Contractor will be instructed to minimize disruption to the adjacent golf course facility.

The NTP is anticipated to be issued in mid-July, 2024 with five (5) months to substantial completion and thirty (30) days to final completion.

The award will be made to the lowest responsive, responsible contractor meeting the minimum qualifications.

Plans by DMK Associates, Inc. define this work.

3. ACCESS, WORK AREA, AND STORAGE AREAS

3.1 General. The general location and extent of work area, access, stockpiling, staging, work, and equipment storage areas shall be coordinated with the Town prior to mobilization to the project site. Unless otherwise directed in writing by the Town, the Contractor is responsible for removing existing vegetation, fencing and other impediments, as necessary, to allow equipment access and material deliveries to the work area. Upon project completion, the Contractor shall restore to at least pre-project conditions and to the satisfaction of the Town those areas where access routes and staging areas are developed at the cost of the Contractor.

3.1.1 In the event infrastructure (e.g. walkways, dune walkovers, sidewalks, fences, vegetation) is temporarily removed or relocated or there is unauthorized damage to vegetation and/or facilities by the Contractor, the Contractor shall restore all damaged structures and natural features to pre-construction conditions or better and to the satisfaction of the Town. The Contractor will not receive final payment until all damage is restored to the satisfaction of the Town. Procurement of additional access routes for ingress and egress to the construction area shall be obtained by, and at the expense of, the Contractor and with the consent of the individual landowner and the Town. The Town shall be notified of all such locations prior to their use by the Contractor. Permit modifications may be required.

3.1.2 The Contractor shall exercise caution when operating in the access, staging and all other Work areas and driving on the boardwalk/path with vehicles or equipment and operating in staging areas. The park and adjacent areas are used by the public throughout the year. The Contractor shall cordon off and/or fence the work and staging areas to prohibit public access. The access, work and staging areas shall be kept neat, orderly, and in a safe manner.

3.2 Access. The Contractor shall work with the Town to maintain public access to areas adjacent to the work sites as much as practical during the construction of the work.

3.3 Work Area. The Contractor shall accomplish the Work in such a manner as to minimize disruption to traffic, residents, and the public to as great a degree as practicable. The Contractor will be permitted to exclude the public for safety purposes from the Work Area.

4. PERMISSIBLE WORK DAYS AND HOURS

Construction activity shall be permitted between 8:00 a.m. and 5:00 p.m. Monday through Saturday in compliance with Chapter 130 of the Town's ordinances, unless waived in writing by the Town. No night-time operations will be accepted.

5. SITE CLEAN-UP AND RESTORATION

- 5.1 It is the intent of the Town that the Work be accomplished with minimum disturbance to the natural resources adjacent to the Work area, and that the immediate and general vicinity of the Work area remain in its pre-project state after completion of the Work. All materials utilized by the Contractor during construction shall be removed from the Site, including debris, construction material, and environmental protection measures.
- 5.2 Material or equipment which in the opinion of the Town may be considered unaesthetic, environmentally deleterious, dangerous to the public, or impactful to private properties, the Contractor shall recover and remove same within twenty-four (24) hours of receipt of said notice at no additional cost to the Town.
- 5.3 The Contractor shall inspect the Work areas at least once per day to ensure that all debris left by the Contractor's and subcontractor's workers has been removed from the Work areas and properly disposed of. This includes, for example, lunch bags, soda cans, drink cups, etc. The Contractor shall utilize predator-proof trash receptacles on the Work Site.
- 5.4 Upon completion of all construction activity, the Contractor shall restore all staging, storage, transport, and Work areas, fences, vegetation, and other facilities to an equivalent pre-project condition or better and to the satisfaction of the Town.
- 5.5 No direct payment for the cost of site clean-up and restoration shall be made. All costs associated with these activities shall be included in the total contract price.

6. ENVIRONMENTAL PROTECTION

- 6.1 This Environmental Protection section addresses the contractor's responsibilities for the prevention of pollution and other environmental damage as the result of construction operations, including those measures set forth in this IFB. For this specification, pollution and other environmental damage are defined as the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance to man; or degrade the utility of the environment for aesthetic, cultural, and/or historical purposes, or damage/destroy upland and marsh habitats. The control of pollution and damage requires consideration of air, water, land, and the marine environment and includes management of construction activities, visual aesthetics, noise, solid waste, radiant energy, and radioactive materials, as well as other pollutants. The Contractor shall fulfill these specifications at the Contractor's expense.
- 6.2 The contractor will use best management practices to protect the adjacent mangroves, not violate any State Water Quality Standards in accordance with any Florida Administrative Code or Statute or harm any benthic resources.

7. MINIMUM REQUIREMENTS FOR BIDS

To be eligible for an award in response to this IFB, bidders must demonstrate they have successfully completed work as specified herein and are normally and routinely engaged in performing such work and are properly and legally licensed to perform such work.

CONTRACTORS MUST SUBMIT ALL INFORMATION REQUESTED BELOW WITH THE BID SUBMITTAL.

The information identified below is required and shall be submitted with the Bid Form in a clear and concise manner, using the forms provided, for Town review.

7.1 Bids should not contain information in excess of that requested, must be concise, and must specifically address all of the items set forth in this Invitation for Bid (IFB). Responses can be either single or double sided. It is requested that the response be submitted in the same order as set forth according to the selection method below:

7.1.1 Bid Forms and Addenda Acknowledgement. Bidders must submit all information requested for the Total Base Bid.

7.1.2 Bid Bond Form - Each Bid shall be accompanied by a certified or cashier's check or a Bid bond, satisfactory and payable to the Town of Longboat Key, FL in an amount not less than five percent (5%) of the Base Bid as a guarantee that the bidder will, within ten (10) days after the date of the award of the Contract, execute an agreement and file bonds and insurance as required by the Contract Documents.

If an intended awardee fails to execute and file an agreement, bonds, and insurance as required by the Contract documents, the amount of the security submitted with his Bid shall be forfeited. However, the extent of damages to the Owner and the extent of the Contractor's responsibility shall not be limited to the amount of the security submitted with the Bid.

7.1.3 Fair Practices Affidavit;

7.1.4 Form of Affidavit Where Bidder is a Corporation, Partnership or Joint Venture, or Sole Proprietor/Individual;

7.1.5 Statement of Organizational Structure, Claims and Suits;

7.1.6 Statement of License Certificate;

7.1.7 List of Subcontractors Form;

7.1.8 References Form;

7.1.9 Drug Free Workplace Certification;

7.1.10 Equal Employment Opportunity Certification;

7.1.11 E-Verify Certification;

7.1.12 Scrutinized Companies Certification;

- 7.1.13 Work Plan;
- 7.1.14 Public Entity Crimes;
- 7.1.15 Affidavit of Compliance with Foreign Entity Laws;
- 7.1.16 FDOT Pre-Qualifications;
- 7.1.16 Bidder Checklist

7.2. Minimum Qualifications for Bid

CONTRACTORS MUST MEET OR EXCEED ALL MINIMUM REQUIREMENTS LISTED BELOW IN ORDER TO BE CONSIDERED FOR AWARD.

- 7.2.1 Must have possessed a Certified General Contractor's License, issued by the Florida Department of Business and Professional Regulation for a period of at least three (3) consecutive years. License must be current and valid.
- 7.2.2 Provide three (3) references for construction projects of similar size and scope constructed by the contractor within the last five (5) years. Reference projects should include work within areas of roadway and drainage construction, pavement markings and landscape installation, with a strong preference for work on barrier islands. Reference information must be current with the name and telephone number of a responsible entity for each project cited.
- 7.2.3 Must be pre-qualified by FDOT in the following work classes:
 - 1. Concrete traffic separators.
 - 2. Flexible paving
 - 3. Drainage
 - 4. Driveways
 - 5. Pavement markings.
 - 6. Landscape installation.
 - 7. Roadway signing.
 - 8. Debris removal
 - 9. Tree trimming & removal.

8. EVALUATION AND AWARD OF CONTRACT

Bids will be reviewed by the Town. The recommendation of award will be forwarded to the Town Manager for review and final decision.

8.1 The Town reserves the following rights:

8.1.1 To be the judge of the bidder's qualifications.

8.1.2 To conduct pre-award discussions with any responsive and responsible bidders who submit bids determined to be reasonably acceptable of being selected for award. Such discussions may include, but not be limited to personal interviews with and/or presentations.

- 8.1.3 To request that bidder(s) modify their bid to more fully meet the needs of the Town or to furnish additional information as the Town may reasonably require.
- 8.1.4 To accord fair and equal treatment with respect to any opportunity for discussions and revisions of bids. Such revisions may be permitted after submission of bids and prior to award.
- 8.1.5 To request additional qualification information.
- 8.1.6 To limit and/or determine the actual services to be included in the contract with the successful bidder.
- 8.1.7 To obtain information from any available sources for use in evaluating the bids.
- 8.1.8 To waive any irregularity in any bid, or reject any or all bids, in part or in whole, should it be deemed to be in the best interest of the Town to do so.
- 8.1.9 To recommend the bid award by the Town Manager, if at all, to a single contractor to the lowest responsive and responsible bidder, provided that the bidder's bid submittal is considered (within the sole discretion of said Town Manager) reasonable, presents the best overall value and is in the best interest the Town to recommend, and no bid protest has been filed. The basis of recommendation will be the Base Bid that present the best overall value and are in the best interest of the Town or may be determined by the availability of funds. The Town will identify the least-cost, acceptable bid which presents the best overall value to the Town of Longboat Key.
- 8.1.10 The Town of Longboat Key retains sole and final discretion as to the acceptability of bids and the Bid that is awarded for contract.

BID SHEET AND ADDENDUM ACKNOWLEDGEMENT
IFB #24-069 STATE ROAD 789 (GULF OF MEXICO DR.) TURN LANES
(MUST BE COMPLETED AND SUBMITTED WITH BID)

The undersigned Contractor declares that the only person or parties interested in this Invitation for Bid (IFB) as principals are those named herein, that this bid is made without any understanding, contract, or connection with any other person, firm, or corporation providing a bid for the same purpose and that this bid is in all respects fair and without collusion or fraud. The Contractor understands that this bid must be manually signed in ink, otherwise it will be considered unresponsive and subject to rejection.

The undersigned Contractor represents that the Contractor accepts, and that this bid complies with, the IFB Documents and that the Contractor has carefully examined the IFB Documents for the designated work. Contractor affirms that Contractor has carefully examined the location of the designated work and, from its own investigations, is satisfied as to the nature and location of the work, the character, quality, and the quantity of materials, the kind and extent of equipment and other facilities needed for the performance of the work, the general and local conditions and all difficulties that may be encountered, and all other items which may, in any way, affect the work or its performance.

The undersigned Contractor proposes, and agrees if this bid is accepted, that it will contract with the Town to provide all necessary machinery, tools, software, labor, apparatus, and other means necessary to do all the work, and furnish all the materials and equipment specified or referred to in the IFB Documents in the manner and time herein prescribed, and according to the requirements of the Town as therein set forth.

Under provisions of Chapter 112, Florida Statutes, Contractor must disclose with bid the name of any officer, director, or agent who is also an employee of the Town of Longboat Key. Contractor must disclose on an attachment (provided by Contractor) entitled "Submitted Bid Conflict of Interest" the name of any Town employee who owns, directly or indirectly, a five percent (5%) or more interest in the Contractor's firm or any of its branches, or in the firm of any subcontractor to this bid. Absence of such an attachment represents Contractor's certification of no such employee.

The undersigned Contractor understands that the Town reserves the right to reject any or all bids and to waive any informalities and minor irregularities in any bid. The Contractor agrees that this bid shall be good and may not be withdrawn for a period of one hundred twenty (120) days after the scheduled IFB opening.

Contractor acknowledges receipt of the following addenda issued during the solicitation period; the cost of which, if any, is included in bid pricing. If an addendum is issued, the Addendum Acknowledgement below must be submitted with the Bid Submittal at the time and due date of the bid.

ADDENDUM #	ADDENDUM DATE
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Having carefully examined the IFB Documents, Contractor agrees to the terms contained therein and proposes to furnish all labor, material, and equipment for the entire work for the **TOTAL BID** and to execute an agreement for work, insurance certifications, and other instruments or documents as specified or included in the IFB Documents, and will completely perform the work in strict accordance with the terms of the IFB Documents

**COMPLETE BID SHEET IN EXCEL
AND
ATTACH A PDF HARD COPY BEHIND THIS PAGE**

The undersigned Contractor acknowledges that work to be performed shall conform to all Town codes and regulations. Work must be accomplished in a professional manner and meet all standards of any professional trade requiring a license and or permit.

Contractor Name

Authorized Signature

Mailing Address

Name (Printed)

City, State and Zip Code

Title (Printed)

(Area Code) Telephone Number

Email Address

Date

Type of Organization:

Sole Proprietorship Partnership Non-Profit Sub-Chapter
 Joint Venture Corporation LLC LLP
 Publicly Traded Employee Owned

State of Incorporation: _____

SR 789 - BID FORM

item no.	description	Unit	Qty	Unit Price	Amount
57-7	Survey, Stakeout & Record drawings	LS	1		
57-7	Construction Engineering and Inspection, CEI	LS	1		
101-1	Mobilization	LS	1		
102-1	MOT	LS	1		
102-71-13	Temporary Barrier, F & I Low Profile, Concrete	LF	4,000		
102-99	Portable Changeable Message Sign, Temporary	ED	240		
104-10-3	Sediment Barrier	LF	9,045		
104-11	Floating Turbidity Barrier	LF	40		
104-18	Inlet Protection System	EA	13		
107-1	Litter Removal	AC	8.662		
107-2	Mowing	AC	7.881		
110-1-1	Clearing & Grubbing	AC	5.322		
120-1	Regular Excavation	CY	3,177		
120-6	Embankment	CY	2,386		
160-4	Type B Stabilization (LBR 40)	SY	12,480		
285-70-4	Optional Base, Base Group 01	SY	340		
285-70-9	Optional Base, Base Group 09	SY	8,768		
327-70-1	Milling Existing Asphalt Pavement, 1" Avg Depth	SY	12,952		
334-1-13	Superpave Asphaltic Concrete, Traffic C (SP-9.5)	TN	742		
334-1-13	Superpave Asphaltic Concrete, Traffic C (SP-12.5)	TN	83		
337-7-83	Asphaltic Concrete Friction Course, Traffic C, FC-12.5, PG76-22	TN	1,223		
400-0-11	Class NS Concrete	CY	3.5		
425-2-41(M)	Manhole, P-7, < 10'	EA	1		
430-175-130	Pipe Culvert, Opt. Material, Round, 30" S/CD	LF	14		
520-2-4	Concrete Curb, Type "D"	LF	2,199		
522-2	Concrete Sidewalk and Driveways, 6" Thick	SY	60		
570-1-2	Performance Turf, Sod	SY	17,318		
700-1-11	Single Post Sign, F & I ground mount, up to 12 SF	AS	3		
700-1-50	Single Post Sign, Relocate	AS	5		
700-1-60	Single Post Sign, Remove	AS	5		
706-3	Retro-Reflective /Raised Pavement Markers	EA	392		
710-11-290	Painted Pavement Markings, std., yellow, solid, island nose	SF	161		
711-11-111	Thermoplastic, std, white , solid, 6"	NM	3.310		
711-11-141	Thermoplastic, std, white, 2-4 dotted guideline/ 6-10 gap extension, 6"	GM	0.485		
711-11-160	Thermoplastic, std, white, message or symbol	EA	24		
711-11-170	Thermoplastic, std, white, arrow	EA	24		
711-11-211	Thermoplastic, std, yellow, solid, 6"	NM	1.458		
711-11-224	Thermoplastic, std, yellow, solid, 18" for diagonal and chevron	LF	215		
711-11-231	Thermoplastic, std, yellow, skip, 6"	GM	0.137		
SUBTOTAL BID PRICE					
Plus Authorized Contract Amendments (5% of Subtotal Bid Price)					
Landscaping and Irrigation					
TOTAL BID PRICE					

BID BOND
(MUST BE COMPLETED AND SUBMITTED WITH BID)

KNOW ALL MEN BY THESE PRESENTS, that
_____ (hereinafter called the "Principal") and

_____ (hereinafter called the "Surety"), a Corporation chartered and existing under the Laws of the State of _____, and authorized to do business in the State of Florida, are held and firmly bound unto the Town of Longboat Key, Longboat Key, Florida, in the full and just sum of _____ dollars (\$_____) good and lawful money of the United States of America, to be paid upon demand of the Town, to which payment will and truly be made, we bind ourselves, our heirs, executors administrators, successors, and assigned jointly and severally and firmly by these presents.

WHEREAS, the Principal is about to submit, or has submitted to the Town, a Bid under Town of Longboat Key IFB 24-069 State Road 789 (Gulf of Mexico Dr.) Turn Lanes;

WHEREAS, the Principal desires to file this Bond in lieu of a certified Bidder's check otherwise required to accompany this Bid Proposal;

NOW THEREFORE, the conditions of this obligation are such if the Bid Proposal is accepted, the Principal shall, within ten (10) Days after the date of receipt of written Notice of Award of Contract, execute a Contract for the State Road 789 (Gulf of Mexico Dr.) Turn Lanes; project with the Town of Longboat Key, Florida, in accordance with the Principal's Bid and upon the terms, conditions and price set forth therein, in the form and manner contained in the Contract Documents and execute sufficient and satisfactory Labor and Material and Performance Bonds payable to Town, each in the amount of 100 percent (100%) of the total Contract Sum, in form and with surety satisfactory to said Town, then this obligation to be void, otherwise to be and remain in full force and virtue in law, and the surety shall, upon failure of the Principal to comply with any or all of the foregoing requirements within the time specified above, immediately pay to the aforesaid Town, upon demand, the amount of this Bond, in good and lawful money of the United States of America, not as a penalty, but as liquidated damages.

In the event the numerical expression is omitted or expressed as less than five percent (5%) of the total Base Bid price, this figure shall be assumed to be erroneously stated and this bid bond shall be binding upon the Principal and Surety in the amount of five percent (5%) of the total Base Bid price.

In testimony thereof, the Principal and Surety have caused these presents to be duly signed and sealed this _____ Day of _____, 20____.

Principal

by _____
seal

Surety

by _____
seal

Countersigned _____

State of _____, County of _____

The foregoing instrument was acknowledged before me this _____ Day of _____, 20____, by _____, who is personally known to me or who has produced _____, as identification and who did (did not) take an oath and who acknowledged before me that he executed the same for the purposes therein expressed on behalf of said corporation.

NOTARY PUBLIC

PRINT OR TYPE NAME

Commission Number

Commission expires

- NOTES:
1. Write in the dollar amount of the bond, which must be at least five percent (5%) of the total of the Base Bid included in the Bid.
 2. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
 3. Attorney-in-fact who signs Bid Bonds or Contract Bonds must file with each bond a certified and effectively dated copy of their power of attorney.

FAIR PRACTICES AFFIDAVIT
(MUST BE COMPLETED AND SUBMITTED WITH BID)

Each Contractor submitting a bid must complete the following affidavit:

STATE OF _____ COUNTY OF _____

_____, makes oath that:
(Name of owner, partner, officer, representative, agent)

(1) She/he is _____ of _____, the Contractor that
(Title: owner, partner, officer, representative) (Name of firm/business)

has submitted the attached bid;

(2) She/he is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid;

(3) Such bid is genuine and is not a collusive or sham bid;

(4) Neither the said Contractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, has in any way colluded, conspired, or agreed, directly or indirectly with any other Contractor, firm or person to submit a collusive or sham bid in connection with the contract for which the attached bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Contractor, firm or person to fix the price or prices in the attached bid of any other Contractor, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Town of Longboat Key or any person interested in the proposed contract or the proceeds thereof;

(5) The undersigned has not given or donated or promised to give or donate directly or indirectly to any official or employee of the Engineer, or the Town of Longboat Key, or the Town of Longboat Key Commissioners, or to anyone else for his benefit any sum of money or other thing of value for aid in assistance in obtaining this contract; and

(6) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Contractor or any of its agents, representatives, owners, employees, or parties in interest, including the undersigned.

(Signature)

(Title)

Subscribed and sworn to before me

This _____ day of _____, 20____.

She/he is personally known to me or has produced _____ as identification and who did take an oath.

(Signature of Notary)

(Commission Number & Commission Expiration)

ACKNOWLEDGEMENT OF FIRM, IF A CORPORATION

STATE OF _____ COUNTY OF _____

The foregoing instruments was acknowledged before me this

_____ (Date) By: _____ (Name of officer or agent, title of officer or agent)

On behalf of the corporation, pursuant to the powers conferred upon said officer or agent by the corporation. He/she personally appeared before me at the time of notarization and is personally known to me or has produced _____ as identification and did certify to have knowledge of the matters stated in the foregoing instrument and certified the same to be true in all respects.

Subscribed and sworn to (or affirmed) before me this _____

_____ Commission Number: _____ (Official Notary Signature and Notary Seal)

_____ Commission expiration date: _____ (Name of Notary typed, printed or stamped)

ACKNOWLEDGEMENT OF FIRM, IF A PARTNERSHIP

STATE OF _____ COUNTY OF _____

The foregoing instruments was acknowledged before me this

_____ (Date) By: _____ (Name of acknowledging partner or agent)

On behalf of the partnership, pursuant to the powers conferred upon said officer or agent by the corporation. He/she personally appeared before me at the time of notarization and is personally known to me or has produced _____ as identification and did certify to have knowledge of the matters stated in the foregoing instrument and certified the same to be true in all respects.

Subscribed and sworn to (or affirmed) before me this _____

_____ Commission Number: _____ (Official Notary Signature and Notary Seal)

_____ Commission expiration date: _____ (Name of Notary typed, printed or stamped)

ACKNOWLEDGEMENT OF FIRM, IF AN INDIVIDUAL

STATE OF _____ COUNTY OF _____

The foregoing instruments was acknowledged before me this

_____ (Date) By: _____ (Name acknowledging)

Who personally appeared before me at the time of notarization and is personally known to me or has produced _____ as identification and did certify to have knowledge of the matters stated in the foregoing instrument and certified the same to be true in all respects.

Subscribed and sworn to (or affirmed) before me this _____

_____ Commission Number: _____ (Official Notary Signature and Notary Seal)

_____ Commission expiration date: _____ (Name of Notary typed, printed or stamped)

ORGANIZATIONAL STRUCTURE, CLAIMS, AND SUITS
(MUST BE COMPLETED AND SUBMITTED WITH BID)

ORGANIZATION

BIDDER NAME, ADDRESS: _____

PHONE # _____

E-MAIL ADDRESS _____

Type of Business _____

How many years in business: _____.

How many years in business under the present business name: _____.

Under what other or former names has your organization operated:

If a corporation, answer the following:

Date of incorporation: _____

State of incorporation: _____

President's name: _____

Vice president's name(s): _____

Secretary's name: _____

Treasurer's name: _____

If a partnership or joint venture, answer the following:

Date of organization: _____

Type of partnership (if applicable): _____

Name(s) of general partners: _____

If individually owned, answer the following:

Date of organization: _____

Name of owner: _____

CLAIMS AND SUITS (if the answer to any of the questions below is yes, please attach details).

BIDDER NAME, ADDRESS:

Has your organization ever failed to complete any work awarded to it?

___ NO ___ YES (details attached)

Are there any judgments, claims, and arbitration proceedings or suits pending or outstanding against your organization or officers?

___ NO ___ YES (details attached)

Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five (5) years?

___ NO ___ YES (details attached)

Has your organization been named as a defendant or brought in as a party to any lawsuits within the last five (5) years?

___ NO ___ YES (details attached)

Within the last five (5) years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract?

___ NO ___ YES (details attached)

STATEMENT OF LICENSE CERTIFICATE
(MUST BE COMPLETED AND SUBMITTED WITH BID)

Qualifying Firm Name: _____

Authorized Firm Qualifying Licensed Person _____

FL General Contractor # _____

Attach Copy of License

SUBCONTRACTORS

(MUST BE COMPLETED AND SUBMITTED WITH BID)

List each subcontractor the bidder proposes to use in performing the Work. Describe the portion of the Work to be performed by each subcontractor.

Subcontractor, Address, Phone Number

Work to be Performed

1.	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>
2.	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>
3.	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>
4.	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>
5.	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>

REFERENCES FOR BIDDER EXPERIENCE
(MUST BE COMPLETED AND SUBMITTED WITH BID)

Please provide three (3) reference projects for construction projects of similar size and scope performed within last five (5) years. Reference projects should include experience on FDOT roadway construction with a strong preference for work on barrier islands. References must apply to projects completed by the Bidder as Prime Contractor.

Past projects reference information must be current with the name and telephone number of a responsible entity for each project cited.

Attach additional sheets as needed.

REFERENCE PROJECT 1

Project Name: _____

Project Owner: _____ Contact Name: _____

Address: _____

City: _____ State: _____

Telephone: _____ Email: _____

Project cost: _____

Start date & end date (if less than 6 months to completion): _____

Summary of work performed: _____

REFERENCE PROJECT 2

Project Name: _____

Project Owner: _____ Contact Name: _____

Address: _____

City: _____ State: _____

Telephone: _____ Email: _____

Project cost: _____

Start date & end date (if less than 6 months to completion): _____

Summary of work performed: _____

REFERENCE PROJECT 3

Project Name: _____
Project Owner: _____ Contact Name: _____
Address: _____
City: _____ State: _____
Telephone: _____ Email: _____
Project cost: _____
Start date & end date (if less than 6 months to completion): _____
Summary of work performed: _____

The undersigned guarantees the accuracy and truth of the information provided herein.
Bidder's Name:

By: _____, its _____
(name) (title)

Signature: _____

WORK PLAN

(MUST BE COMPLETED AND SUBMITTED WITH BID)

1. Provide a detailed construction sequence and schedule, depicting each major task to complete the project successfully and on time. The plan should include a brief description of the proposed methods of mobilization / demobilization, the development, use, and protection of access areas, and the transport and delivery of construction materials to the site.
2. Identify lead times and any procurement challenges for construction materials.
2. Identify the proposed key members of the project team. Include name, title and project assignment. Include any past projects that specifically relate to utility work.
3. Provide a brief narrative describing the current workload and ability to responsively provide the scope required. Include a graphic representation of current commitments for key members of the project team.

DRUG FREE WORKPLACE CERTIFICATION
(MUST BE COMPLETED AND SUBMITTED WITH BID)

Identical Tie Bids: Preference shall be given to businesses with drug free workplace programs. If two or more bids are equal with respect to price, quantity, and service then a bid received from a business that certifies that it has implemented a drug free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if all or none of the tied vendors have or do not have a drug free workplace program (Florida Statutes Section 287.087). In order to have a drug free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the action that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug free workplace, and available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug free workplace through implementation of this section.

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

BIDDER:

Print or type name of entity

By: _____
Signature

Print or type name

Print or type title

Drug Free Workplace Certification, page 2 of 2

State of _____ County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, who is personally known to me or who has produced _____, as identification and who did (did not) take an oath and who acknowledged before me that he executed the same for the purposes therein expressed on behalf of said corporation.

NOTARY PUBLIC: _____

Typed Name: _____

Commission Expires: _____

EQUAL EMPLOYMENT OPPORTUNITY
(MUST BE COMPLETED AND SUBMITTED WITH BID)

The Town of Longboat Key is an Equal Opportunity/Affirmative Action Employer.

Pursuant to Executive Order 11346 as amended, you are advised that under the provisions of government contracting, contractors and subcontractors are obliged to take affirmative action to provide equal employment opportunity without regard to race, creed, color, national origin, age or sex.

**CERTIFICATION BY PROPOSED PRIME OR SUBCONTRACTOR
REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

This certification is authorized pursuant to Executive Order 11246, Part II, Section 203(b), (30 F. R. 12319-15). Any bidder or prospective contractor, or any of the proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicated that the prime or subcontractor has not filed a compliance report due under applicable instruction, such contractor shall be required to submit a compliance report.

(Signature of Bidder)

(Typed name of bidder)

Phone # _____ Email _____

Address: _____

1. Bidder has participated in a previous contract or subcontract, subject to the Equal Opportunity Clause: YES ___ NO ___

2. Compliance Reports were required to be filed in connection with such contract or subcontract:
YES ___ NO ___

If YES, state what reports were filed and with what agency.

3. Bidder has filed all compliance reports due under applicable instructions:
YES ___ NO ___

If answer to Item 3 is NO, please explain in detail on reverse side of this certification.

PARTICIPATION IN E-VERIFY PROGRAM
(MUST BE COMPLETED AND SUBMITTED WITH BID)

Contractor hereby certifies compliance with the following:

Pursuant to State of Florida Executive Order No.: 11-116, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Contractor while performing work or providing services for the Town of Longboat Key, FL. Contractor shall also include in any related subcontracts a requirement that subcontractors performing work or providing services for the Town of Longboat Key, FL, on its behalf utilize the E-Verify system to verify employment of all new employees hired by subcontractor.

CONTRACTOR:

Business Name

By: _____
Signature

Name: _____
Printed

Title: _____
Printed

Date: _____

SCRUTINIZED COMPANIES CERTIFICATION
(MUST BE COMPLETED AND SUBMITTED WITH BID)
(Florida Statutes, Section 287.135)

SOLICITATION NUMBER: **IFB 24-069**
PROJECT NAME: **State Road 789 (Gulf of Mexico Dr.) Turn Lanes**

The undersigned, as _____ of _____ (the "Contractor"), a _____, hereby certifies the following to the Town of Longboat Key, Florida, a political subdivision of the State of Florida, by and on behalf of the Contractor in accordance with the requirements of Florida Statutes, Section 287.135:

- (i) the Contractor is not on the Scrutinized Companies with Activities in Sudan List, and
 - (ii) the Contractor is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List
- (as both such lists are created pursuant to Florida Statutes, Section 215.473); and
- (iii) the Contractor does not have business operations (as that term is defined in Florida Statutes, Section 287.135) in Cuba and Syria; and
 - (iv) the Contractor was not on either of the foregoing lists or conducting business operations in Cuba or Syria; and
 - (v) the Contractor is not on the Scrutinized Companies that Boycott Israel List (pursuant to Florida Statutes, Section 215.4725: and
 - (v) the Contractor is fully aware of the penalties that may be imposed upon the Contractor for submitting false certification to the Town regarding the foregoing matters; and
 - (vi) the undersigned is duly authorized to execute this Certification.

ATTEST:

CONTRACTOR

As to Contractor Name

(Contractor Name)

(Signature)

By: _____
(Signature)

Its _____
(Title of Authorized Representative)

(Print or Type Name)

(Print or Type Name)

Date: _____
Seal:

Date: _____

PUBLIC ENTITY CRIMES FORM
(MUST BE COMPLETED AND SUBMITTED WITH PROPOSAL)

**SWORN STATEMENT UNDER SECTION 287.133(3)(a),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to _____
[print name of public entity]

by _____
[print individual's name and title]

For _____
[print name of entity submitting sworn statement]

whose business address is: _____

City, State and Zip _____

and (if applicable) its Federal Employer Identification Number (FEIN) is _____

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: _____.)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentations.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

1. A predecessor or successor of a person convicted of a public entity crime: or

2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies.)

_____ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THE FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

State of _____ County of _____

The foregoing instrument was acknowledged before me this ____ day of _____ 2024 who is personally known to me or as produced as identification and who did (did not) take an oath and who acknowledge before me that he executed the same for the purposes therein expressed on behalf of said corporation

NOTARY PUBLIC: _____

Typed Name: _____

Commission Expires: _____

FDOT PRE-QUALIFICATION
(MUST BE COMPLETED AND SUBMITTED WITH BID)

Contractor must be FDOT pre-qualified in the following classes below. Contractor must acknowledge and confirm they are pre-qualified and in good standing with FDOT.

- 1. Concrete Traffic Separators _____
- 2. Flexible Parking _____
- 3. Drainage _____
- 4. Driveways _____
- 5. Pavement Markings _____
- 6. Landscape Installation _____
- 7. Roadway Signing _____
- 8. Debris Removal _____
- 9. Tree Trimming and Removal _____

The undersigned guarantees the accuracy and truth of the information provided herein.

Contractor's Name: _____

By: _____, its _____
(name) (title)

Signature: _____

BIDDER CHECKLIST
(MUST BE COMPLETED AND SUBMITTED WITH BID)

Failure to submit the documents below shall result in the Contractor being deemed by the Town as an unresponsive bidder.

All Contractors must acknowledge they have submitted the documents below with the Bid.

- _____ Submitted Bid Form and Acknowledgement of Addenda
- _____ Bid Bond
- _____ Fair Practices Affidavit
- _____ Affidavit of Organization
- _____ Organizational Structure, Claims, and Suits
- _____ Statement of License Certificate
- _____ List of Subcontractors Form
- _____ References Form
- _____ Work Plan
- _____ Drug-Free Workplace Certification
- _____ Equal Employment Opportunity
- _____ Participation in E-Verify Program
- _____ Scrutinized Companies Certification
- _____ Public Entity Crimes
- _____ Compliance with Foreign Entity Laws
- _____ FDOT Pre-Qualification
- _____ Checklist

DRAFT CONTRACT
FOR
IFB 24-069 STATE ROAD 789 (GULF OF MEXICO DR.) TURN LANES

This Contract for the Town of Longboat Key's STATE ROAD 789 (GULF OF MEXICO DR.) TURN LANES is entered into by and between the Town of Longboat Key, Florida, 501 Bay Isles Road, Longboat Key, FL 34228, a political subdivision of the State of Florida (hereinafter "Town") and _____, a _____, whose address is _____ (hereinafter "Contractor") as of the date appearing on the signature lines below.

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ARTICLE 1 – WORK

1.01 Contractor shall complete all work as specified or indicated in the Town's Invitation for Bid 24-069 (hereinafter "IFB"), Contractor's bid submittal in response to the IFB, all Contract Documents as enumerated herein, and as otherwise directed by the Town. The work (hereinafter "Work") is generally described as State Road (Gulf of Mexico Dr.) Turn Lanes.

ARTICLE 2 – CONTRACT TIMES

2.01 *Time of the Essence*

All time limits for Substantial Completion and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

2.02 *Contract Times*

The contract time for this project is a total of DAYS (270) calendar days from the Town's issuance of the Notice to Proceed to reach Substantial Completion of the entire Project and DAYS (330) calendar days from the Notice to Proceed to Final Acceptance of the entire Project.

Completion of the Contract will have been achieved once Final Acceptance has been reached and all final documentation, including final application for payment, has been received and processed.

2.03 *Liquidated Damages*

Contractor and Owner recognize that time is of the essence as stated in Paragraph 2.01 above and that Owner will suffer financial and other losses if the Work is not completed and milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in

a legal proceeding the actual loss suffered by the Owner if the Work is not completed on time. The parties confirm that, (i) the assessment of liquidated damages is reasonable and appropriate; (ii) the terms and the amount(s) of the liquidated damages stated below are reasonable; and (iii) the liquidated damages will be assessed as the Town's remedy under such circumstances and not as a penalty. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

- A. Substantial Completion: Contractor shall pay Owner one thousand, one hundred forty-eight dollars (\$1,148.00) for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 2.02 above for Substantial Completion until the Work is substantially complete.
- B. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) to reach the point of Final Acceptance, Contractor shall pay Owner \$000.00 for each day that expires after such time until the Work is completed and ready for final payment.
- C. Liquidated damages for failing to timely attain Substantial Completion and Final Acceptance are not additive and will not be imposed concurrently.
- D. This remedy is in addition to and supplements any and all other remedies to the Owner as set forth in the Contract Documents or at law or in equity for damages other than delay.

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by DMK Associates, Inc. of Sarasota, Florida.
- 3.02 The Owner has retained Engineer to act as Owner's representative, assume all duties and responsibilities related to the Project, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT PRICE

- 4.01 Town shall pay Contractor for completion of the Work in accordance with the amounts that follow, subject to adjustment under the Contract:
 - A. Total Amount, a contract sum of: _____
_____ (\$ _____), pursuant to the following:

INSERT FINAL BID SHEET

ARTICLE 5 – PAYMENT PROCEDURES

5.01 *Submittal and Processing of Payments*

Contractor shall submit Applications for Payment in accordance with the General Conditions and the determination of eligible payments described in the Specifications and Requirements. Applications for Payment will be processed by Engineer.

5.02 *Progress Payments; Retainage*

Prior to Substantial Completion, Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment in an amount equal to ninety five percent (95%) of the Work completed (with the balance being retainage), less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided herein (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

ARTICLE 6 – CONTRACTOR'S REPRESENTATIONS

6.01 To induce the Town to enter this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified within.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and can and shall comply with all Federal, State, and local laws and regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- E. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- F. Contractor is aware of the general nature of work to be performed by Town and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.
- H. Contractor has issued all required Certificates of Insurance required by this Contract and the Contract Documents.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Contract;
 - 2. General Conditions;
 - 3. Specifications Package;
 - 4. Permits, Design Variances;
 - 5. Construction in Florida Department of Transportation Right Of Way;
 - 6. Construction Plans consisting of forty-five (45) pages prepared by DMK Associates, Inc.;
 - 7. Landscape Plans consisting of thirty-nine (39) pages prepared by David W. Johnston Associates;
 - 8. Certificates of Insurance with endorsements, Notice of Award, and Notice to Proceed;
 - 9. Any and all Addenda (including Change Orders and Field Orders);
 - 10. The Invitation to Bid (IFB), Instructions to Bidders, and Contractor's Bid to the IFB;
 - 11. Any and all singular forms or attachments required to be submitted by the Contractor as part of the IFB.

- B. The documents listed in Paragraph 7.01.A are attached to this Contract (except as expressly noted otherwise above).

- C. The Contract Documents may only be amended, modified, or supplemented as approved by the Town.

6.02 Insurance

- A. *Workers' Compensation*: The Contractor shall maintain complete workers' compensation coverage for each and every employee, principal, officer, representative, or agent of the Contractor who is performing any labor, services, or material under the Contract. Further, Contractor shall additionally maintain the following minimum limits of coverage:
 - 1. Bodily Injury Each Accident \$1,000,000
 - 2. Bodily Injury by Disease Each Employee \$1,000,000
 - 3. Bodily Injury by Disease Policy Limit \$1,000,000
 - 4. Contractor's workers compensation policy shall be endorsed to provide USL&H Act (WC 00 01 06 A) and Jones Act (WC 00 02 01 A) coverage if specified by the Town. Contractor shall provide the Town with a Certificate of Insurance verifying compliance with the workman's compensation coverage as set forth herein and shall provide as often as required by the Town such certification which shall also show the insurance company, policy number, effective and expiration date, and the limits of workman's compensation coverage under each policy.

- B. *Commercial General Liability—Claims Covered*: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
 - 1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 - 2. Claims for damages insured by reasonably available personal injury liability coverage.

3. 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.
 4. Liability Insurance policy shall include minimum limits of:
 - a. \$2,000,000 Aggregate (Per Project)
 - b. \$2,000,000 Products Aggregate
 - c. \$1,000,000 Any One Occurrence
 - d. \$1,000,000 Personal Injury
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on an industry standard ACORD certificate and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against 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. The automobile liability policy shall be written on an occurrence basis. Policy shall include minimum limits of:
1. \$1,000,000.00 combined single limit
- E. *Contractor Pollution Liability:* Contractor shall purchase and maintain Pollution Liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the scope of services. Policy shall include minimum limits of:
1. \$1,000,000.00 per claim
- F. *Additional insureds:* The Contractor's commercial general liability, automobile liability, and pollution liability policies shall include and list Town, Engineer, and Florida Department of Transportation as additional insured; 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 (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- G. *General provisions:* The policies of insurance required shall:
1. Be endorsed to give 30 days written notice to the Town in the event of cancellation or material change, using form CG 02 24, or its equivalent. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Town.
 2. Certificates of Insurance submitted to the Town will not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation/material change notice endorsements, and waivers of

subrogation. Copies of USL&H Act and Jones Act endorsements will also be required. CONTRACTOR SHALL ADVISE INSURANCE AGENT ACCORDINGLY.

3. Remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
4. Be appropriate for the Work being performed and provide protection from claims that 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.

H. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

ARTICLE 8 – MISCELLANEOUS

8.01 *Assignment of Contract*

Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is 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.

8.02 *Successors and Assigns*

Contractor binds itself, its successors, assigns, and legal representatives to the Town, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

8.03 *Choice of Law and Forum Selection*

The sole and exclusive forum, venue and jurisdiction for any action arising from this agreement shall be in the 12th Judicial Circuit in and for Sarasota County.

8.04 *Contract Modifications or Amendments*

This Contract shall not be modified or amended except in writing with the same degree of formality with which this Contract is executed.

8.05 *Waiver*

A waiver of any breach of any provision of this Contract shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provisions.

8.06 *Severability*

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Town 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.

8.07 *Dispute Resolution*

The laws of the State of Florida shall govern all provisions of this Contract. In the event the parties to this Contract cannot resolve a difference with regard to any matter arising herefrom, the disputed matter will be referred to court-ordered mediation pursuant to Section 44.102, F.S. If no agreement is reached, any party may file a civil action and/or pursue all available remedies whether at law or equity. Venue for any dispute shall be Sarasota County, Florida.

8.08 *Public Records*

Pursuant to applicable Florida law, the Contractor's records associated with this Contract may be subject to Florida's public records laws, Section 119.01, F.S., et seq, as amended from time to time. The Contractor agrees to comply with Florida's public records law by keeping and maintaining public records required by the Town in order to perform the Work. Upon request from the Town's Custodian of Public Records, the Contractor shall provide the Town with copies of or allow access to the requested public records at a cost that does not exceed the cost provided for under Chapter 119, Florida Statutes, or as otherwise provided for by Florida law. The Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of the Contract and following completion of the Contract if the Contractor does not transfer the records to the Town. Upon completion of the Contract the Contractor shall transfer, at no cost, to the Town all public records in possession of the Contractor or keep and maintain all public records required by the Town to perform the Work. If the Contractor transfers all public records to the Town upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS TRISH SHINKLE, TOWN CLERK, AT 501 BAY ISLES ROAD, LONGBOAT KEY, FLORIDA 34228, (941) 316-1999, TSHINKLE@LONGBOATKEY.ORG.

8.09 *Contractor's Certifications*

Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 7.09:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Town, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Town of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Town, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.10 Notice

All notices required under this Contract shall be sent by e-mail, return receipt requested, or certified mail, return receipt requested, and if sent to the Town, shall be mailed:

To Town:

Isaac Brownman, Director of Public Works
 600 General Harris St.
 Longboat Key, FL 34228
IBrownman@longboatkey.org

With copies to:

Howard Tipton, Town Manager
 501 Bay Isles Road
 Longboat Key, FL 34228
Tharmer@longboatkey.org

And

Maggie D. Mooney, Esq., Town Attorney
 6853 Energy Court
 Lakewood Ranch, FL 34240
mmooney@flgovlaw.com

with a copy emailed to the Town's Procurement Manager at Purchasing@Longboatkey.org

To CONTRACTOR:

Contractor's Contact _____

Contractor's Name _____

Contractor's Address _____

Contractor's E-Mail _____

8.11 *E-Verify*

The Contractor and its subcontractors (if any) warrant compliance with all federal immigration laws and regulations that relate to their employees including, but not limited to, registering with, and using the E-Verify system. Contractor agrees and acknowledges that the Owner is a public employer that is subject to the E-Verify requirements as set forth in Section 448.095, Florida Statutes, and that the provisions of Section 448.095, F.S., apply to this Agreement. Notwithstanding, if the Owner has a good faith belief that Contractor has knowingly hired, recruited, or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under this Agreement, the Owner shall terminate the Agreement. If the Owner has a good faith belief that a subcontractor performing work under this Agreement knowingly hired, recruited, or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under this Agreement, the Owner shall promptly notify Contractor and order Contractor to immediately terminate the contract with the subcontractor. Contractor shall be liable for any additional costs incurred by the Owner as a result of the termination of the Agreement based on Contractor's failure to comply with the E-Verify requirements referenced herein.

[Remainder of page intentional blank]

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract as of the day and year last written below. Town and Contractor have signed this Contract in two originals in counterpart. One counterpart each has been delivered to the Town's Procurement Manager and the Contractor. All portions of the Contract Documents have been signed, initialed or identified by Town and Contractor on their behalf.

ATTEST:

As to (NAME OF CONTRACTOR)

Signature

(Print or Type Name)

(Print or Type Title)

Date: _____

Seal:

CONTRACTOR

(NAME OF CONTRACTOR)

By: _____

Its _____
(Title of Authorized Representative)

(Print or Type Name)

(Print or Type Title)

Date: _____

ATTEST:

As to Town of Longboat Key, Florida

By: _____
Trish Shinkle, Town Clerk

Date _____

Seal:

TOWN:

Town of Longboat Key, Florida

By: _____
Howard Tipton, Town Manager

Date: _____

Review of Contract as to Form

By: _____
Maggie D. Mooney, Esq., Town Attorney

PERFORMANCE BOND
IFB 24-069 STATE ROAD 789 (GULF OF MEXICO DR.) TURN LANES

Bond # _____

KNOW ALL MEN BY THESE PRESENTS: That we, _____,
_____, as Principal, and
_____, a surety insurer
chartered and existing under the laws of the State of _____ and authorized to do
business in the State of Florida, as Surety, are held and firmly bound unto the Town of Longboat
Key, Florida, as Obligee (hereinafter referred to as Owner) in the sum of
_____ dollars (\$ _____), for the
payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and
assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a contract dated as of the _____ day
of _____, 20____, with Owner for the Longboat Key, FL, State Road 789 (Gulf of Mexico
Dr.) Turn Lanes Project, in accordance with drawings and specifications which contract is by reference
made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract; and
2. Pays Owner any and all losses, damages, costs and attorneys' fees that Owner sustains because
of any default by Principal under the Contract; and
3. Performs the guarantee of all work and materials furnished under the Contract applicable to the
work and materials, then this bond is void; otherwise it remains in full force; and
4. Principal understands and agrees that this bond shall remain in full force and effect throughout
the one (1) year warranty period after substantial completion of the work.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of
time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or
the specifications referred to therein shall in anywise affect its obligation under this bond, and it does
hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the
Contract or to work or to the specifications.

This instrument shall be construed in all respects as a common law bond.

In no event will the Surety be liable in the aggregate to Owner for more than the penalty sum of
this Performance Bond, regardless of the number of suits that may be filed by Owner.

IN WITNESS WHEREOF, the above parties have executed this instrument this ____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these premises duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered in the presence of:

PRINCIPAL:

By: _____

Name: _____

Witnesses as to Principal

Its: _____

STATE OF _____ COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me OR has produced _____ as identification and did (did not) take an oath.

My Commission Expires:

(Signature)

Name: _____

Notary Public, State of _____

ATTEST:

SURETY: _____
(Printed Name)

(Business Address)

Witness

(Authorized Signature)

Witnesses as to Surety

(Printed Name)

OR

Witnesses

As Attorney In Fact (Attach Power)

(Business Address)

(Printed Name)

(Telephone Number)

STATE OF _____ COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me OR has produced _____ as identification and did (did not) take an oath.

My Commission Expires:

(Signature)

Name: _____
Notary Public, State of _____

APPROVED as to form:

BY: _____
Maggie D. Mooney, Esq., Town Attorney

LABOR & MATERIAL PAYMENT BOND
IFB 24-069 STATE ROAD 789 (GULF OF MEXICO DR.) TURN LANES

Bond # _____

KNOW ALL MEN BY THESE PRESENTS: That we, _____, as Principal, and _____, a surety insurer chartered and existing under the laws of the State of _____ and authorized to do business in the State of Florida, as Surety, are held and firmly bound unto the Town of Longboat Key, Florida, as Oblige (hereinafter referred to as Owner) in the sum of _____ dollars (\$ _____), for the payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a contract dated as of the _____ day of _____, 20____, with Owner for the Longboat Key, FL, State Road 789 (Gulf Of Mexico Dr.) Turn Lanes, in accordance with drawings and specifications which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated _____, 20____, between Principal and Owner for construction of Longboat Key, FL., State Road 789 (Gulf Of Mexico Dr.) Turn Lanes Project, 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 the 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.

BE IT FURTHER KNOWN:

1. Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the said Contract or alterations which may be made in the terms of the said Contract, or in the work to be done under it, or the giving by the County of any extension of time for the performance of the said Contract, or any other forbearance on the part of the Owner or Principal to the other, shall not in any way release the Principal and the Surety, or either of them, their heirs, personal representatives, successors or assigns from liability hereunder, notice to the Surety of any such changes, alterations, extensions or forbearance being hereby waived.
2. Certain claimants seeking the protection of this Bond must timely comply with the strict requirements set forth in Section 255.05, Florida Statutes, and as otherwise provided by law.
3. As concerns payment for labor, materials and supplies, as affects certain claimants, no legal action shall be instituted against the Principal or Surety on this Bond after one (1) year from the

performance of labor or the completion of delivery of the materials or supplies as is specifically mandated pursuant to Section 255.05, Florida Statutes.

THIS BOND DATED THE _____ DAY OF _____, 20____.

Signed, sealed and delivered
in the presence of:

PRINCIPAL:

Witness as to Principal

By: _____

Name: _____

Witness as to Principal

Its: _____

STATE OF _____ COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me OR has produced _____ as identification and did (did not) take an oath.

My Commission Expires:

(Signature)

Name: _____

Notary Public, State of _____

ATTEST:

SURETY: _____
(Printed Name)

(Business Address)

Witness as to Surety

(Authorized Signature)

Witness as to Surety

(Printed Name)

OR

Witness as to Attorney in Fact

As Attorney In Fact (Attach Power)

Witness as to Attorney in Fact

(Business Address)

(Printed Name)

(Telephone Number)

STATE OF _____ COUNTY OF _____
The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____, as _____, of
_____, a _____ corporation, on behalf of the
corporation. He/she is personally known to me OR has produced _____ as
identification and did (did not) take an oath.

My Commission Expires:

(Signature)

Name: _____

Notary Public, State of _____

APPROVED as to form:

BY: _____
Maggie D. Mooney, Esq., Town Attorney

AFFIDAVIT
(MUST BE COMPLETED AND SUBMITTED WITH CONTRACT)

STATE OF _____ COUNTY OF _____.

Affiant, _____ makes oath that he/she is the
_____ (attorney in fact or agent) of
_____ (surety) on the attached Contract
dated _____, 20____, executed by
_____(Contractor).

Affiant further deposes and says that no officer, official, or employee of the Owner or Engineer has any interest directly or indirectly, or is receiving any premium, commission fee, or other thing of value on account of the same or furnishing of the bond, undertaking, or contract of indemnity, guaranty, or suretyship in connection with the above mentioned Contract.

Signed _____

Subscribed and sworn to before me
This _____ day of _____, 20____.

NOTARY:

Signature of Notary

Print or Type Name of Notary

Commission Number

Commission expires

GENERAL CONDITIONS TO THE CONTRACT
IFB 24-069 STATE ROAD 789 (GULF OF MEXICO DR.) TURN LANES

GENERAL CONDITIONS

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ARTICLE 1 – DEFINITIONS

1.01 *Defined Terms and Terminology*

- A. *Defined Terms* - Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. 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 which clarify, correct, or change the Contract Documents including but not limited to Change Orders and Field Orders.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 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. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Bonds* – Bid, performance, and payment bonds and other instruments of security as provided by the Contractor.
 9. *Change Order*—A written recommendation from the 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, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 10. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
 11. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 12. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
 13. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
 14. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 15. *Day* – A calendar day of twenty-four hours measured from midnight to the next midnight.
 16. *Drawings* - See *Plans*.
 17. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 18. *Engineer*—The firm of DMK Associates, Inc., acting through its authorized representative(s). The term is synonymous with “Project Engineer” or “Consultant.”
 19. *Environmental Pollution* - the presence of chemical, physical or biological elements or agents which adversely affect human health or welfare, unfavorably alter ecological balance of importance to human life, affect other species of importance to man, or degrade the utility of the environment for aesthetic or recreational purposes. The control of environmental pollution requires consideration of air, water and land and involves noise, solid waste-management and management of radiant energy and

20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
21. *Final Acceptance* – The date when the construction of the project is complete in accordance with the Contract Documents so that the entire project can be utilized for the purposes for which it is intended and all monies due Contractor can be paid in the final Application for Payment.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
24. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
25. *Notice to Proceed*—A written notice 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.
26. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract. Herein the Owner is the Town of Longboat Key, FL. The terms Owner and Town are used interchangeably.
27. *Permits*-The documents issued that provide authorization and requirements or restriction for the Work to be performed from Federal, State, County, or local regulatory agencies.
28. *Plans* - The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor, also called Construction Plans or Drawings.
29. *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.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.
33. *Shop Drawings*- All drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by or for Contractor to illustrate some portion of the work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by a supplier and submitted by Contractor to illustrate material or equipment for 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, and such other lands furnished by Owner which are designated for the use of Contractor.
35. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
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.
37. *Substantial Completion*— 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. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

38. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
39. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
40. *Technical Reports* – Reports issued by the Owner consisting of written technical material.
41. *Technical Requirements* – The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
42. *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 but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
43. *Unit Price Work*—Work to be paid for on the basis of unit prices.
44. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

B. *Terminology*

1. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
2. *Intent of Certain Terms or Adjectives:*

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 Article 10 or any other provision of the Contract Documents.
3. *Defective:*

The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 13.03 or 13.04).
4. *Furnish, Install, Perform, Provide:*
 - a. 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.
- b. 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.
 - c. 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.
 - d. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
5. 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. *Bonds:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.

2.02 *Copies of Documents*

Owner shall furnish to Contractor up to four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

2.03 *Before Starting Construction*

Preliminary Schedules: Within fifteen (15) days after issuance of the Notice to Proceed (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer and Owner for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work and
2. a preliminary schedule of submittals.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, agents of appropriate regulatory agencies, 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 2.03, requirements of the Permits for the Work, the procedures for handling Shop Drawings, samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. 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 and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Initial Acceptance of Schedules*

At least ten (10) days before submission of the first Application for Payment, Contractor shall submit for review a draft of the Application for Payment for review by Engineer as to the form of

the Application and the proposed allocation of the Contract Price for that and subsequent Applications for Payment. Such review will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all. The Contract Documents shall be construed in accordance with the Laws of the State of Florida.
- 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.
- C. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

Standards Specifications, Codes, Laws and Regulations

- A. Reference in the Contract Documents to standard specifications, manuals, reference standards, 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, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
- B. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. 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 part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

- 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
- 2. *Contractor's Review of Contract Documents:* If, before or 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) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) 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 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

3. Contractor shall be liable to Owner for failure to report any conflict, error, defect, ambiguity, or discrepancy in the Contract Documents if the Contractor knew or reasonably should have known thereof.

B. *Resolving Discrepancies:*

Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

1. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
2. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's and Engineer's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

The Contract Times will commence to run on the day indicated in the Notice to Proceed.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Time commences to run. No Work shall be done at the Site prior to such date.
- B. Notice - Contractor shall notify Owner four (4) days in advance of starting work at the site of its intentions to do so. In case of temporary suspension of the work, Contractor shall give reasonable notice before resuming work.

4.03 *Reference Points*

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.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. 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, or during any appeal process, except as permitted by Paragraph 14.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times as may be determined by the Owner. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Delays due to adverse weather conditions or tides, excepting significant specific or named storm events, will not be regarded as cause for adjustment in Contract Time, as Contractor should understand that such conditions are to be expected and plan work accordingly. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 - 3. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.

- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph immediately upon occurrence of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site, including rights-of-way and easements that are made available to Contractor. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the work is to be performed
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

- A. *Limitation on Use of Site and Other Areas:*
 - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment.
 - 2. *Loss or Damage of Contractor's Equipment:* Loss or damage to Contractor's or Subcontractor's equipment is solely at the risk of Contractor or Subcontractor.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent 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. *Cleaning:* 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 and adjacent areas 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.
- D. *Loading of 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 structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Specifications and Requirements and Appendices identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site that have been utilized in the preparation of the Contract Documents;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the Technical Data expressly identified in the Technical Requirements with respect to such reports and drawings, but such reports and drawings are not Contract Documents. Except for such reliance on Technical Data, 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 Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. 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;

then Contractor shall, immediately upon 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 7.14), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the condition in question; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, 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 fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. any adjustment in Contract Price will be subject to the provisions of Article 11; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;or

- b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
- c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
- 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
- 4. Contractor may submit a written request for a Change Order regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than thirty (30) days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent 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 elsewhere in these Contract Documents:
 - 1. Owner and Engineer do not warrant or guarantee 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 information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then 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 7.14), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.
- C. *Engineer's Review:* Engineer will promptly review the Underground Facility; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
 - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an

increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. any adjustment in Contract Price will be subject to the provisions of Article 11; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 3. Contractor may submit a request for a Change Order regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than thirty (30) days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment 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. These bonds shall remain in effect until one year after the date when final payment becomes due except as provided otherwise by Laws or Regulations, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury, and rated 'A', FSC VII or better by A.M. Best. A bond 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 the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within ten (10) days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.

6.02 *Insurance—General Provisions*

- A. Contractor is to secure, pay for, and file with the Owner (Town of Longboat Key), prior to commencing any work under the Contract, all certificates for workers' compensation, public liability, and property damage liability insurance, and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amounts indicated. Notwithstanding any other provision of the Contract, the Contractor shall provide the minimum limits of liability insurance coverage as listed in Section 6.03.
- B. All insurance required by the Contract to be purchased and maintained by Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or

jurisdiction in which the Project is located, to issue bonds or insurance policies for the required limits and coverages. Unless a different standard is indicated elsewhere in the Contract Documents, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of 'A', FSC VII or better.

- C. Contractor shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, the Owner (Town of Longboat Key), the Engineer (DMK Associates), The Florida Department of Transportation, and the entities listed in Section 6.02.C.1 (if any), named as additional insureds on a PRIMARY and NON CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 20 10 (11/85) or its equivalent (combination of CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations, is acceptable), including a waiver of subrogation clause in favor of the Owner (Town of Longboat Key), the Engineer (DMK Associates), and the entities listed in Section 6.02.C.1 (if any), on all policies. Contractor will maintain the General Liability and Umbrella Liability insurance coverages summarized in Section 6.03 with coverage continuing in full force including the additional insured endorsement throughout the duration of the project and the warranty period.
- D. Contractor shall not allow a Subcontractor to work on the project or to be present at the project area without either Subcontractor carrying his own Workers Compensation and Liability Insurance to the limits stated herein, excepting umbrella liability insurance, or the Contractor expressly covering the Subcontractor under his policies. The policy is the same for any sub-tier Contractor. The Owner may request proof of such coverage at any time during the performance of the work.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 Contractor's Insurance

- A. *Workers' Compensation*: Notwithstanding any other provision of the Contract, the Contractor shall maintain complete workers' compensation coverage for each and every employee, principal, officer, representative, or agent of the Contractor who is performing any labor, services, or material under the Contract. Further, Contractor shall additionally maintain the following minimum limits of coverage:
 - 1. Bodily Injury Each Accident \$1,000,000
 - 2. Bodily Injury by Disease Each Employee \$1,000,000
 - 3. Bodily Injury by Disease Policy Limit \$1,000,000
 - 4. If the work is being done on or near a navigable waterway, CONTRACTOR's workers compensation policy shall be endorsed to provide USL&H Act (WC 00 01 06 A) and Jones Act (WC 00 02 01 A) coverage if specified by the Owner (Town of Longboat Key).
 - 5. Contractor shall provide the Owner (Town of Longboat Key) with a Certificate of Insurance verifying compliance with the workman's compensation coverage as set forth herein and shall provide as often as required by the Owner (Town of Longboat Key) such certification which shall also show the insurance company, policy number, effective and expiration date, and the limits of workman's compensation coverage under each policy.
- B. *Commercial General Liability—Claims Covered*: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
 - 1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 - 2. claims for damages insured by reasonably available personal injury liability coverage.
 - 3. 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.
 - 4. Liability Insurance policy shall include minimum limits of:
 - a. \$2,000,000 Aggregate (Per Project)
 - b. \$2,000,000 Products Aggregate

- c. \$1,000,000 Any One Occurrence
 - d. \$1,000,000 Personal Injury
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on an industry standard ACORD certificate and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.17.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against 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. The automobile liability policy shall be written on an occurrence basis. Policy shall include minimum limits of:
1. \$1,000,000.00 combined single limit
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies. Policy shall include minimum limits of:
1. \$2,000,000.00 occurrence/aggregate
- F. *Contractor Pollution Liability:* Contractor shall purchase and maintain Pollution Liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the scope of services. Policy shall include minimum limits of:
1. \$1,000,000.00 per claim
- G. *Additional insureds:* The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and the entities listed in Section 6.02.C; 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 (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
1. be endorsed to give 30 days written notice to the Town of Longboat Key in the event of cancellation or material change, using form CG 02 24, or its equivalent. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 2. Certificates of Insurance submitted to the Town of Longboat Key will not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation/material change notice endorsements, and waivers of subrogation. Copies of USL&H Act and Jones Act endorsements will also be required if necessary. CONTRACTOR SHALL ADVISE INSURANCE AGENT ACCORDINGLY.
 3. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.

4. be appropriate for the Work being performed and provide protection from claims that 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.
- I. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.03, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
- B. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Contract Documents as insureds, the Engineer and its consultants, 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 any insurance applicable to the Work.

6.05 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by the Contract Documents will be adjusted and settled by the Owner as fiduciary for the insured as their interest may appear. The Owner shall account for all money received and shall distribute it in accordance with such agreements as the parties in interest may reach.
- B. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

- 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.
- B. 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 Town reserves the right to require the Contractor to remove and replace the superintendent of the Project within fifteen (15) days of notice.

7.02 *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. Working Hours are as set forth in the Specifications and Requirements.

7.03 *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, whether or not such items are specifically called for in the Contract Documents.

- B. All materials and equipment incorporated into the Work 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 of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 *Substitutes*

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer and applicable regulatory agencies to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.04.B, as supplemented by the Specifications and Requirements, and as Engineer may decide is appropriate under the circumstances.
 - 3. 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:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents, including regulatory permits (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
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute and has been approved for use under the project Permits. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in

Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

- C. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- D. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Field or Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.

7.05 *Concerning Subcontractors, Suppliers, and Others*

- A. 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.
- B. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Contractor shall not employ any Subcontractor until Owner's approval in writing is received for each Subcontractor. As necessary, all Subcontractors must obtain the appropriate business licenses before commencing work.
- C. Should any Subcontractor fail to perform their portion of the Work in a satisfactory manner, such Subcontractor shall be terminated immediately by Contractor upon notice from the Owner.
- D. 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.
- E. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- F. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- G. 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 money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.06 *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.
- B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, defend, 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.

7.07 *Permits*

- A. Owner will provide permits and easements for the Work from the following major agencies having jurisdiction:
 - 1. Florida Department of Environmental Protection (FDEP)
 - 2. Florida Department of Transportation (FDOT)
 - 3. Geotechnical Reports
- B. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all other construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

7.08 *Taxes*

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.

7.09 *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 or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and 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 such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

7.10 *Record Documents*

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

7.11 *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, other work in progress, 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 Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
 1. Contractor shall notify Owner (Town of Longboat Key) and Engineer (DMK Associates) immediately by telephone at contact numbers to be provided at the time of the pre-construction conference of any accident or injury to anyone that occurs on the jobsite and is related to any of the work being performed by the Contractor.
 - C. Contractor is responsible for observing and complying with all applicable Occupational Safety and Health Administration (OSHA) regulations.
 - 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. Accident Prevention. In order to provide safety controls for protection of the life and health of employees and other persons; for prevention of damage to property, materials, supplies and equipment; and for avoidance of Work interruptions in the performance of this Contract, the Contractor shall comply with all pertinent provisions of Corps of Engineers Manual, EM 385-1-1, dated 30 November 2014, entitled "Safety and Health Requirements Manual", as amended, and will also take or cause to be taken such additional measures as the Owner or Engineer may determine to be reasonably necessary for the purpose.
 1. The Contractor will maintain an accurate record of, and will report to the Engineer in the manner and on the forms prescribed by the Engineer, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property, materials, supplies and equipment incident to work performed under this Contract.
 2. The Owner or Engineer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the Work, shall be deemed sufficient to the purpose. If the Contractor fails or refuses to comply promptly, the Engineer may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.
 - F. All damage, injury, or loss to any property referred to in Paragraph 7.11.A.2 or 7.11.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 its expense.
 - G. The Owner or Engineer may periodically monitor Work site safety. Neither the Owner or Engineer, or their representatives, shall have or assume any responsibility or duty whatsoever with respect to the adequacy of the Contractor's safety measures in, on, or near the project area. The Contractor shall have the sole and exclusive duty and responsibility for compliance with all OSHA and other safety requirements with respect to the Work and the performance of the Work.
 - H. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed in accordance with Article 13 (except as otherwise expressly provided in connection with Substantial Completion).
 - I. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.12 *Safety Representative*

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.

7.13 *Hazard Communication Programs*

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

7.14 *Emergencies*

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 written notice within twenty-four (24) hours that the emergency action has been taken and shall state the reasons therefore. 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, Contractor shall provide written notice of such. Engineer shall review such notice and shall make recommendations to Owner regarding the issuance of a Field Order or Change Order will be issued.

7.15 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the 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 and equipment 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 of that submittal, and that Contractor approves the 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 set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - 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 7.15.D.
2. *Samples:*
 - a. Contractor shall submit the number of Samples required in the Specifications.

- b. Contractor shall 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 7.15.D.
 3. 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. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- 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, including the project permits, 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 or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample 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 7.16.A.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 will document any such approved variation from the requirements of the Contract Documents in a Field Order.
 5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.15.A and B.
 6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
 7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, nor other submittal shall result in such item becoming a Contract Document.
 8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.15.D.4.
- 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.
 2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
 3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner

may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.16 *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. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- 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 an 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 Engineer or any payment related thereto by Owner;
 - 4. use or occupancy of the Work or any part thereof by Owner;
 - 5. any review and approval of a Shop Drawing or Sample submittal;
 - 6. 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.
- C. All work shall be guaranteed by Contractor for a period of one (1) year from and after the date of Final Acceptance of the Work by owner.
- D. If, within the guarantee period, repairs or changes are required in connection with guaranteed work which, in the opinion of Owner or Engineer, is rendered necessary as the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the Contract, Contractor shall, promptly upon receipt of notice from Owner and without expense to Owner, do the following:
 - 1. Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein.
 - 2. Make good all damage to the building, or site, or equipment, or contents thereof which, in the opinion of Engineer, is the result of the use of materials, equipment, or workmanship which is inferior, defective, or not in accordance with the terms of the Contract.
 - 3. Make good any work or materials or the equipment and contents of building, structure, or site disturbed in fulfilling any such guarantee.
 - 4. Submit a work schedule showing the dates of starting and completing the repair work.
- E. If Contractor, after notice, fails to proceed within ten (10) days to comply with the terms of this guarantee, Owner may have the defects corrected, and Contractor and his surety shall be liable for all expense incurred: provided, however, that in case of an emergency where, in the opinion of Owner, delay would cause loss or damage, repairs may be started without notice being given to Contractor and Contractor shall pay the cost thereof.
- F. If minor repairs are made by Owner without notice to Contractor, or if Owner personnel are used to assist Contractor or an equipment supplier in making repairs to defective work, Contractor will be billed for and shall pay the costs of the minor repairs and the costs associated with the use of Owner's personnel.

7.17 *Indemnification*

- A. To the fullest extent permitted by law, the Contractor expressly agrees to indemnify, defend, and hold harmless the Town of Longboat Key, DMK Associates, The Florida Department of Transportation, the entities listed in Section 6.02.C, their officers, directors, agents, and employees (herein called the "indemnitees") from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor, its Subcontractors or persons employed or

utilized by them in the performance of the Contract. Claims by indemnitees for indemnification shall be limited to the amount of Contractor's insurance or \$1 million per occurrence, whichever is greater. The parties acknowledge that the amount of the indemnity required hereunder bears a reasonable commercial relationship to the Contract and it is part of the project specifications or the bid documents, if any.

- B. The indemnification obligations under the Contract shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor under workers' compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the Contractor or of any third party to whom Contractor may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of the work.
- C. The Contractor agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, or subconsultants (each referred to as 'Entity' for the purposes of the below indemnification) who perform work in connection with this Contract:

"To the extent provided by law, 'Entity' shall indemnify, defend and hold harmless the Owner, and the State of Florida, Department of Transportation, including its officers, agents, and employees, against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful acts of 'Entity', or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by 'Entity'.

The foregoing indemnification shall not constitute a waiver of the Owners or the Florida Department of Transportation sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28. Nor shall the same be construed to constitute agreement by 'Entity' to indemnify the Owner for the negligent acts or omissions of the Owner, its officers, agents, or employees or third parties. Nor shall the same be construed to constitute agreement by 'Entity' to indemnify the Florida Department of Transportation for the negligent acts or omissions by its officers, agents, or employees or third parties. This indemnification shall survive the termination of this Contract."

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. 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.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, 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.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

- 9.01 *Communications to Contractor*
Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.
- 9.02 *Furnish Data*
Owner shall promptly furnish the data required of Owner under the Contract Documents.
- 9.03 *Pay When Due*
Owner shall make payments to Contractor when they are due as provided in the Agreement.
- 9.04 *Lands and Easements; Reports, Tests, and Drawings*
- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
 - B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
 - C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

- 10.01 *Owner's Representative*
Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.
- 10.02 *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.
 - B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.06. 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.
- 10.03 *Project Representative*
Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in these General Conditions and limitations on the responsibilities thereof will be as provided in Paragraph 10.08.

10.04 *Rejecting Defective Work*

Engineer has the authority to reject Work in accordance with Article 12.

10.05 *Decisions on Requirements of Contract Documents and Acceptability of Work*

Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work.

10.06 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, 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. The limitations upon authority and responsibility set forth in this Paragraph 10.06 shall also apply to the Resident Project Representative, if any.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

The Contract Documents may be amended or supplemented by a Change Order or a Field Order.

- 1. *Change Orders:* If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order signed by Contractor, Engineer, and Owner. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
- 2. *Field Orders:* Engineer may authorize minor changes in the Work if the changes 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.

11.02 *Owner-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. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price.
- B. Upon receipt of any such written order, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Contractor shall not be entitled to claim lost profits for work deleted. Added or revised Work shall be performed under the applicable conditions of the Contract Documents.

11.03 *Unauthorized Changes in the Work*

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, except in the case of an emergency as provided in Paragraph 7.14 or in the case of uncovering Work as provided in Paragraph 12.05.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order.
- B. An adjustment in the Contract Price will be determined by one or more of the following methods, as selected by the Owner:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved; or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by negotiated unit prices; or
 - 3. then by a mutually agreed lump sum.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Notification to Surety*

If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.01 *Access to Work*

Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at all 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.

12.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. 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.
- C. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 - 3. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- D. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

12.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

12.04 *Acceptance of Defective Work*

If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order, including an appropriate reduction in project sum. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner to compensate for the defect.

12.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work at the Contractor's expense, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all 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, then 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, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages 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 pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. 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.

12.06 *Owner May Stop the Work*

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, then 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 or any other party. The Contractor shall have no right to claim an increase in the Contract Sum or Contract Time or other damages for a Stop Work order issued under this paragraph.

12.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, 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, then Owner may, after seven (7) days written notice to Contractor, correct or remedy any such deficiency.
- B. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph will be charged against Contractor as set-offs against payments due under Article 13. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- C. Contractor shall not be allowed an increase in the Contract Sum or 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.

ARTICLE 13 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

13.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 5 of the Agreement will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payment applications shall be prepared and values determined as established in the Specifications and Requirements. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- B. *Reductions in Payment by Owner:*
 1. Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;

- d. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - e. the Work is defective, requiring correction or replacement;
 - f. Owner has been required to correct defective Work in accordance with Paragraph 12.07, or has accepted defective Work pursuant to Paragraph 12.04;
 - g. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - h. liquidated damages have accrued as a result of Contractor's failure to achieve Substantial Completion and/or Final Acceptance of portions of the Work, as defined in the Agreement;
 - i. 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;
 - j. there are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, 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, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a proposal for a Change Order contesting the reduction.

13.02 *Contractor's Warranty of Title*

Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, at the time of payment by Owner.

13.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete. Contractor shall at the same time submit to Owner and Engineer a thorough and conclusive punch list of items to be completed or corrected before final payment. The Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. Failure to include an item on this list does not relieve the Contractor of the responsibility to complete all Work in accordance with the Contract Documents.
- B. 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 giving the reasons therefor.
- C. 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 punch list.

13.04 *Partial Use or Occupancy*

Prior to Substantial Completion of all the Work, Owner or general public 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. Such use or occupancy shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents.

13.05 *Final Inspection*

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, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.06 *Final Payment*

Application for Payment:

1. After Contractor has, in the opinion of Owner and Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work, including the Waiver and Release of Lien form found in Section 2120.
3. In lieu of the releases or waivers of Liens specified in Paragraph 13.06. 2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. 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.

13.07 *Waiver of Claims*

The acceptance of final payment and submittal of the Waiver and Release of Lien Form by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 15.

13.08 *Correction Period*

- A. If after approval of final payment and prior to one (1) year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work or materials are found to be defective, incomplete, or not in accordance with the Contract Documents, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. correct the defective repairs to the Site or such other adjacent areas;
 2. correct such defective Work;
 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 to 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. 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 correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).

ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION

14.01 *Owner May Suspend Work*

At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any proposal seeking such adjustments shall be submitted no later than thirty (30) days after the date fixed for resumption of Work.

14.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 1. Contractor's declaration of bankruptcy, development of insolvency, or assignment assets to the benefit of Contractor's creditors;
 2. Contractor's persistent 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);
 3. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 4. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 5. Contractor's repeated disregard of the authority of Owner or Engineer.
 6. Contractor's loss of license or certification.
- B. If one or more of the events identified in Paragraph 14.02.A occurs, then after giving Contractor (and any surety) ten (10) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, 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 complete the Work as Owner may deem expedient.
- D. If Owner proceeds as provided in Paragraph 14.02.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 the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor 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.

- 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, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraph 14.02.B.

14.03 *Owner May Terminate For Convenience*

- A. Upon seven (7) days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or incidental or consequential damages, or other economic loss arising out of or resulting from such termination.

14.04 *Additional Owner Termination Rights*

- A. The Owner may immediately terminate the Agreement upon occurrence of any of the following events:
 - 1. The Contractor is found to have submitted a false certification to the Owner with respect to whether the Contractor:
 - a. is on the Scrutinized Companies with Activities in Sudan List (pursuant to Florida Statutes, Section 215.473);
 - b. is on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (pursuant to Florida Statutes, Section 215.473);
 - c. has business operations in Cuba or Syria
 - 2. The Contractor:
 - a. is placed on the Scrutinized Companies with Activities in Sudan List, or
 - b. is placed on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or
 - c. engages in business operations in Cuba or Syria.

ARTICLE 15 – FINAL RESOLUTION OF DISPUTES

15.01 *Procedure*

Contractor shall notify the Owner in writing within five (5) calendar days of the date any dispute or claim occurs or is discovered, that may arise in the course of this Agreement, including but not be limited to, law, additional work and all claims for alleged breach of contract. Means for dispute resolution are set forth in the Agreement.

ARTICLE 16 – MISCELLANEOUS

16.01 *Giving Notice*

Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if in compliance with the Notice instructions provided in the Agreement (Section 2000).

16.02 *Computation of Times*

When any period of time is referred to in the Contract 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 acknowledged as a Town holiday, such day will be omitted from the computation.

16.03 *Cumulative Remedies*

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. 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.

16.04 *Survival of Obligations*

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

16.05 *Contractor Evaluation*

The Contractor is notified that the Town will complete a Contractor Evaluation at the completion of the project and that the evaluation will remain on file with the Town along with other correspondence and records from this project.